

72102

CAUSE NO. 12,764

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TITUS COUNTY, TEXAS
	§	
BILLY JOE WARDLOW	§	76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

October 27, 1994

VOLUME 14 of 43 volumes

FILED IN  
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

ORIGINAL

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**FILED IN**  
**COURT OF CRIMINAL APPEALS**

**OCT 11 1995**

**Troy C. Bennett, Jr., Clerk**

## VOLUME 14

## VOIR DIRE EXAMINATION

OCTOBER 27, 1994PAGE/VOLUME

APPEARANCES . . . . . 1/14

MORNING SESSION . . . . . 3/14

POTENTIAL JUROR, RONALD WAYNE BOOTH

EXAMINATION BY MR. TOWNSEND . . . 15/14

EXAMINATION BY MR. HINSON . . . . 38/14

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING  
OF THE POTENTIAL JUROR . . . . . 65/14

NOON RECESS . . . . . 67/14

AFTERNOON SESSION . . . . . 67/14

POTENTIAL JUROR, BOBBY KEITH PEARSON

EXAMINATION BY MR. LEE . . . . . 70/14

EXAMINATION BY MR. HINSON . . . . 96/14

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING  
OF THE POTENTIAL JUROR . . . . . 126/14

DISCUSSION CONCLUDED . . . . . 139/14

POTENTIAL JUROR, BOBBY KEITH PEARSON, (CONTINUING)

CONTINUING EXAMINATION BY MR. HINSON 143/14

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING  
OF THE POTENTIAL JUROR . . . . . 144/14

DISCUSSION CONCLUDED . . . . . 147/14

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING  
OF THE POTENTIAL JUROR . . . . . 154/14

RECESS . . . . . 156/14

POTENTIAL JUROR, ALTON DEAN ALEXANDER

EXAMINATION BY MR. LEE . . . . . 159/14

EXAMINATION BY MR. OLD . . . . . 179/14

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING  
OF THE POTENTIAL JUROR . . . . . 216/14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VOLUME 14

VOIR DIRE EXAMINATION

(CONTINUING)

<u>OCTOBER 27, 1994</u>	<u>PAGE/VOLUME</u>
DISCUSSION CONCLUDED . . . . .	221/14
DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING OF THE POTENTIAL JUROR . . . . .	229/14
DISCUSSION CONCLUDED . . . . .	229/14
<u>POTENTIAL JUROR, DANIEL RAY SMYTH</u> . . . . .	230/14
COURT ADJOURNED . . . . .	236/14
COURT REPORTER'S CERTIFICATE . . . . .	237/14

\*\*\*\*\*

## VOLUME 14

## ALPHABETICAL INDEX OF

## POTENTIAL JURORS

OCTOBER 27, 1994PAGE/VOLUMEPOTENTIAL JUROR, ALTON DEAN ALEXANDER

EXAMINATION BY MR. LEE . . . . . 159/14

EXAMINATION BY MR. OLD . . . . . 179/14

POTENTIAL JUROR, RONALD WAYNE BOOTH

EXAMINATION BY MR. TOWNSEND . . . . . 15/14

EXAMINATION BY MR. HINSON . . . . . 38/14

POTENTIAL JUROR, BOBBY KEITH PEARSON

EXAMINATION BY MR. LEE . . . . . 70/14

EXAMINATION BY MR. HINSON . . . . . 96/14

EXAMINATION BY MR. HINSON (CONT.) . . . . . 143/14

POTENTIAL JUROR, DANIEL RAY SMYTH

EXAMINATION BY THE COURT . . . . . 230/14

\*\*\*\*\*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CAUSE NO. 12,764

THE STATE OF TEXAS                   §   IN THE DISTRICT COURT OF  
   §  
VS.                                   §   TITUS COUNTY, TEXAS  
   §  
BILLY JOE WARDLOW                   §   76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

October 27, 1994

VOLUME 14 of 43 volumes

Before Honorable Gary R. Stephens

Judge by Judicial Assignment

(Venue changed from Morris County, Texas)

APPEARANCES

ATTORNEYS FOR THE STATE OF TEXAS:

MR. RICHARD TOWNSEND  
District Attorney  
Morris County Texas  
Morris County Courthouse  
Daingerfield, Texas 75638

and

MR. RANDY LEE  
Assistant District Attorney  
Cass County Texas  
P.O. Box 940  
Linden, Texas 75563

1 ATTORNEYS FOR THE DEFENDANT:

2 MR. BIRD OLD, III  
3 Old, Rolston & Old  
4 P.O. Box 448  
Mt. Pleasant, Texas 75456-0448

5 and

6 MR. LANCE HINSON  
7 Law Offices of Danny Woodson  
8 P.O. Box 399  
9 Mt. Pleasant, Texas 75456-0399  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1                   On the 26th day of October, 1994, the  
2                   above-entitled and numbered cause came on for hearing  
3                   before said Honorable Court, Judge Gary R. Stephens of  
4                   Midlothian, Texas, serving by judicial assignment in the  
5                   District Court of Titus County, Texas, on change of venue  
6                   from Morris County, Texas, and the following proceedings  
7                   were had:

8                   THE COURT: Let the record  
9                   reflect that there is no juror present.

10                  Mr. Townsend, off the record you  
11                  informed the Court that you had some conversation with  
12                  a County or District Attorney in South Dakota, would you  
13                  like to state on the record what you told me?

14                  MR. TOWNSEND: Yes.

15                  The County Attorney in South Dakota, I  
16                  don't recall his name right now, but anyway he's the  
17                  County Attorney, has jurisdiction over the area where the  
18                  Defendant was arrested and he informed me that the  
19                  officers up there in addition to getting a consent to  
20                  search and in addition to doing what they consider to be  
21                  an inventory search that prior to making any sort of  
22                  search that they obtained a search warrant.

23                  And he mentioned to me that they have  
24                  a search warrant law in South Dakota that allows them to  
25                  get a search warrant by orally dictating into a tape



1 something or another and I don't really understand  
2 exactly how that happens and I'm not familiar with the  
3 statute.

4 I requested that he send me a copy of  
5 the search warrant, a copy of the audiotape, a copy of  
6 the statute involved and any other information he has  
7 regarding this particular search warrant.

8 He, you know, told me that he will get  
9 that information to me as quickly as possible.

10 However, he does have a problem with the  
11 tape in that he does not have possession of it and the  
12 person who is in possession of it is out of town for a  
13 few days.

14 THE COURT: Mr. Old, you do  
15 have a pending Motion to Suppress and as I understand the  
16 motion it has to do with a search in South Dakota, is  
17 that correct?

18 MR. OLD: That is correct.

19 THE COURT: I assume that you  
20 were not aware of what Mr. Townsend just told us until  
21 this morning?

22 MR. OLD: No. I was not  
23 aware, I am aware of what he said, I am not aware of what  
24 he's talking about.

25 THE COURT: You have not been

1 privy to any information which he has?

2 MR. OLD: No. I haven't.  
3 That information specifically requested in our Motion  
4 for Discovery, the Judge sustained the order on May 18th,  
5 1994 and I presumed that the Court is viewing what Mr.  
6 Townsend has just told us as a matter of submission of  
7 information but the Court is not acting on any motion at  
8 this time.

9 THE COURT: No. I am not.  
10 I'm just letting the record reflect what Mr. Townsend has  
11 learned, whether it will be admissable or not is  
12 something we will take up at another time.

13 MR. TOWNSEND: May I ask  
14 something?

15 MR. OLD: I would certainly  
16 further point out Section 18 of our Motion for Discovery,  
17 it asks for and requests warrants and affidavits as to  
18 what he is describing. I have never seen anything to  
19 indicate that such a thing existed.

20 We would inform the Court that we really  
21 think it has an effect on how quickly we can be ready to  
22 start the trial of this case.

23 I mean, I don't know what the law of  
24 South Dakota is and how it would effect a Texas trial.  
25 I mean I may in fact actually have to hire a lawyer up

1       there to advise me on that law. I don't know. I don't  
2       know what I have got to do.

3               But I mean I am -- if -- this will  
4       certainly be made subject to a motion to suppress  
5       evidence for an untimely production.

6               THE COURT: Mr. Townsend.

7               MR. OLD: I'm not asking the  
8       Court to rule on anything.

9               THE COURT: I have nothing to  
10      rule on.

11              MR. TOWNSEND: I want to also  
12      state that my secretary, Pam, made phone calls back some  
13      months ago in regard to this case and particularly asked  
14      the officer that was involved in the arrest, I can't  
15      recall his name right now, but anyway he was the  
16      arresting officer, she asked him was there a search  
17      warrant, he said, "No. We did it based on consent to  
18      search and based on inventory search."

19              Apparently he had forgotten there was  
20      a search warrant or someone else got the search warrant,  
21      I don't know. But anyway our information was until this  
22      attorney called me a couple of days ago was that there  
23      was not a search warrant.

24              THE COURT: You are telling  
25      me that you didn't know your office was aware of a search

1 warrant until a day or two ago?

2 MR. TOWNSEND: Today is  
3 Thursday, it was on Tuesday.

4 THE COURT: The 25th?

5 MR. TOWNSEND: And not only  
6 were we not aware but Pam had made inquiries about that  
7 because she, you know, I asked her the question, you  
8 know, make sure on that, you know, whether there was a  
9 search warrant or warrant, a search warrant, I thought  
10 there was not one but I wanted her to make sure.

11 She made inquiries, she tells me that  
12 she made an inquiry about that particular item and the  
13 officer said, no, it was just -- just, no, there was a  
14 consent to search signed and the search.

15 THE COURT: So you are telling  
16 me you made an inquiry in good faith, you were unaware  
17 of any search warrant until October 25th, 1994?

18 MR. TOWNSEND: Yes, Your  
19 Honor.

20 No. Excuse me.

21 THE COURT: That would have  
22 been Tuesday?

23 MR. TOWNSEND: What day did  
24 we get out of here early?

25 THE COURT: We left early

1 yesterday.

2 MR. TOWNSEND: It wasn't  
3 yesterday, it was one day we stayed until about 5:30, it  
4 was not that day, it was the day that --

5 MR. OLD: Tuesday.

6 MR. TOWNSEND: It would have  
7 been Tuesday, it would have been Tuesday.

8 THE COURT: The 25th?

9 MR. TOWNSEND: Right.

10 THE COURT: All right. I  
11 still have a pending motion.

12 Mr. Old, I think the appropriate time  
13 for me to take up any issue concerning the newly  
14 discovered evidence would be at the time that we have  
15 that motion hearing so I am not prepared to act on your  
16 motion nor the information he gave you this morning.

17 MR. OLD: I am certainly not  
18 going to be put in the position to argue his hearsay  
19 statement, hearsay upon hearsay.

20 THE COURT: Mr. Old, you also  
21 stated off the record that you were not prepared for  
22 trial.

23 I have actually not taken announcements  
24 of ready for trial from either side. I had assumed that  
25 both sides were ready for trial but I also want both

1 sides to know if you are not ready it's not going to be  
2 a problem with me to give whatever time is necessary for  
3 both sides to be ready.

4 Now, I do intend to proceed with voir  
5 dire and get a jury selected before we hear any other  
6 motions.

7 So I don't think that the Motion to  
8 Suppress will even be heard until the latter part of  
9 November.

10 MR. OLD: Your Honor, I am not  
11 -- if I were -- if I recall correctly I think the Court  
12 agreed, you did not ask us for specific announcements of  
13 ready.

14 I will tell the Court the morning we sat  
15 down to do the general voir dire of the jury or even  
16 perhaps the afternoon before I think I indicated to the  
17 Court that I was ready and I mean if I did not I was  
18 ready.

19 THE COURT: I don't know.

20 MR. OLD: Now as to about 16  
21 or 17 or so items of discovery and new witnesses being  
22 designated after dates those things should have been  
23 furnished me, I cannot say at this point I am ready, I'm  
24 trying to review that information and determine the  
25 effect of our position of trying this case, whether or

1 not we are ready.

2 But it's coming to pass about every time  
3 I resolve an issue I get a new issue and I'm behind,  
4 Judge.

5 THE COURT: I have been in a  
6 conference with Judge Moye and Judge Porter and they have  
7 been discussing with me the need for their courtroom.  
8 They hope that we try the case in December. I don't know  
9 what you all's position is. I don't care when we try it,  
10 in November or December or January, frankly. It will be  
11 tried but I'm not going to force anybody to trial until  
12 both sides have had adequate time to prepare so that  
13 should not be a problem.

14 As both sides know I am from Dallas so  
15 having a few weeks recess between voir dire and the trial  
16 would not hurt my feelings at all if I had to go on. So  
17 I will give everybody sufficient time. But I don't want  
18 you to think by that that I'm just going to put this  
19 thing on hold forever.

20 Are both sides still prepared to go  
21 forward in the voir dire?

22 Mr. Townsend, are you prepared?

23 MR. TOWNSEND: Yes.

24 THE COURT: Mr. Old?

25 MR. OLD: Yes, Your Honor.

1 THE COURT: The record should  
2 also reflect that Mr. Townsend brought to the Court's  
3 attention that we have been acting under an improper  
4 assumption, the parole law as I believe it to be now  
5 requires a minimum sentence of 35 years because the date  
6 of this offense was in June of '93 and I believe the  
7 statute changed the minimum of 35 to 40 in September of  
8 '93.

9 I propose to have the Court Reporter  
10 review his notes to find out specifically which jurors  
11 we told that parole meant 40 years.

12 Once those jurors are ascertained if  
13 there's a need for either side to bring them back and  
14 voir dire on the 35 as opposed to 40 I will do so.

15 I would hope that each side will act in  
16 good faith if a decision has already been made to strike  
17 that juror for other reasons I would hope that you will  
18 inform the Court there's no need to talk to them. But  
19 if you do need to talk to them I certainly will honor  
20 requests made and bring them in once we determine who  
21 they are.

22 Let's proceed with voir dire and at this  
23 time we will talk about 35 years instead of 40.

24  
25 (Off the record discussion.)



1 THE COURT: All right. Who  
2 is first?

3  
4 RONALD WAYNE BOOTH, Potential Juror #83,  
5 was called as a Potential Juror and, having been  
6 previously sworn by the Court, testified as follows:

7  
8 THE COURT: Good morning, sir.

9 THE POTENTIAL JUROR: Good  
10 morning.

11 THE COURT: Go ahead and take  
12 your seat if you would.

13 Did you get your trip taken care of?

14 THE POTENTIAL JUROR: Yes.

15 THE COURT: Mr. Booth, I'm  
16 Gary Stephens, I am presiding over the jury selection and  
17 trial in this case.

18 We have two attorneys representing the  
19 State of Texas, we have Mr. Richard Townsend who is the  
20 District Attorney from Morris County and then we have Mr.  
21 Randall Lee who is an Assistant District Attorney in Cass  
22 County and will be the District Attorney in Cass County  
23 in January.

24 We have two Defense Attorneys present  
25 in the courtroom, Mr. Lance Hinson.

1 MR. HINSON: How are you  
2 doing?

3 THE COURT: His partner for  
4 this case, Mr. Bird Old was with us a moment ago, he had  
5 to go tend to another matter, he will be back in just a  
6 minute.

7 Sir, next to Mr. Hinson is the person  
8 charged, the Defendant, Mr. Billy Wardlow.

9 Mr. Booth, the lawyers have read your  
10 questionnaire and they are familiar with your answers,  
11 they are going to talk to you about some of those answers  
12 and most importantly they are going to talk to you about  
13 the principles of law involved in a death penalty case.

14 You will be asked a lot of questions and  
15 the answers will tell us whether or not to put you on the  
16 jury.

17 In order to be qualified you have to  
18 understand and follow the law, you don't even have to  
19 agree with the law, it's kind of like filing taxes, you  
20 don't have to agree but you have to file and as long as  
21 you do it you have complied with the law, that's what we  
22 expect of jurors, if you disagree with the law and can  
23 follow the law you are qualified, if you disagree so much  
24 and to such an extent that you are not able to follow it  
25 you are not qualified, that's why we are going to talk

1 about the law and your ability to follow the law.

2 Mr. Booth, we have also discovered over  
3 years of picking jurors at death penalty cases that  
4 although a person may not be an appropriate juror for a  
5 death penalty case, even though you may be well qualified  
6 there could be something in your background or personal  
7 life that would let the lawyers know this is not the kind  
8 of case for you so we want to know how you think what you  
9 think and how you get to those conclusions.

10 It's going to seem like you are on trial  
11 but you are not. There are no right or wrong answers,  
12 this is not a pop quiz, we are not trying to test you,  
13 we want to know how you think and where you are coming  
14 from and the only way we know to find that out is to ask  
15 questions and have you open up and share your views with  
16 us.

17 We will not be able to tell you whether  
18 you are on the jury today, we may be able to release you  
19 but we won't be able to tell you you are on the jury.

20 What we are doing is qualifying and  
21 every week or two we will go over the qualified jurors  
22 and make decisions who is or is not on the jury so in all  
23 probability it will be next week before you find out if  
24 you are on the jury.

25 Do you have any questions, sir?

1 THE POTENTIAL JUROR: No, sir.

2 THE COURT: Mr. Townsend?

3 Before you begin let me ask Mr. Booth  
4 one other question; Mr. Booth, you told us that you had  
5 a kidney transplant?

6 THE POTENTIAL JUROR: Yes.

7 THE COURT: How long ago?

8 THE POTENTIAL JUROR: Twenty  
9 years.

10 THE COURT: Would there be any  
11 reason that you could not sit as a juror for a week?

12 THE POTENTIAL JUROR: No.

13 THE COURT: Or two weeks?

14 THE POTENTIAL JUROR: No.

15 THE COURT: Mr. Townsend.

16

17 VOIR DIRE EXAMINATION

18 BY MR. TOWNSEND

19

20 Q Mr. Booth, how are you this morning?

21 A Just fine.

22 Q The Judge just took my first question.

23 Mr. Booth, from looking at your  
24 questionnaire I have noticed a couple of things I want  
25 to ask you about that won't take but just a minute.

1                                   You indicate that you knew Mr. Old?

2           A               Yes.

3           Q               The other attorney representing the Defendant  
4           is Lance Hinson, do you know Lance?

5           A               Yes.

6           Q               Okay. Let me ask you first about Mr. Old; how  
7           well do you know him?

8           A               He represented my sister before in a divorce,  
9           I think he has done some stuff for my dad, my sister  
10          works for Jimmy White -- my sister -- my wife works for  
11          Jimmy White and I know him through them and know him  
12          around town.

13          Q               Okay. Since Mr. Old represented your -- did  
14          you say "sister?"

15          A               Yeah. And he's representing her now.

16          Q               He is now?

17          A               She is in the process of a divorce and he's her  
18          lawyer.

19          Q               Okay. Since he -- he has represented her and  
20          currently is representing her and since you know him  
21          around town and that sort of thing is there anything  
22          about that relationship, whether you might describe it  
23          as a friendship or acquaintance or whatever, is there  
24          anything about that relationship that would make it hard  
25          for you to be fair and impartial or would it cause you

1 to want to lean one way or the other in this trial?

2 A No.

3 Q It wouldn't bother you to see Mr. Old on the  
4 street a couple of weeks after the trial if it didn't  
5 turn out the way he wanted it to?

6 A No. Not in the least.

7 Q How about Mr. Hinson, basically the same  
8 question?

9 A No.

10 Q How do you know Mr. Hinson?

11 A School.

12 Q What?

13 A High school, went to school.

14 Q You went to high school with him?

15 A Yes.

16 Q And you don't think that with either attorney  
17 that would cause you any problem?

18 A No.

19 I haven't seen Lance in years.

20 Q Okay. And I did note you mentioned your wife  
21 worked for Jimmy White?

22 A Yes.

23 Q Of course Jimmy represents the defendant in  
24 criminal -- not this defendant but, you know, at times  
25 he does represent defendants in criminal cases?

1 A Yes.

2 Q Is there anything about that that would make  
3 you partial to one side or the other?

4 A No.

5 Q In any way?

6 A No, sir.

7 Q Okay. Do you know anything about the facts of  
8 this case?

9 A No, sir. I don't.

10 Q Let me talk to you some then about the death  
11 penalty; I have looked at your questionnaire and saw what  
12 your answers were on that first page. If you remember  
13 it we had some questions about the death penalty and on  
14 there you said that you believed it was appropriate in  
15 some murder cases?

16 A Yes.

17 Q Your feelings about the death penalty, are they  
18 pretty much the same as they have always been or have you  
19 had an opinion change at any point in your life?

20 A No. They have pretty much always been the  
21 same.

22 Q Okay. Do you know of any reason why you  
23 couldn't serve as a juror in this case and return a  
24 verdict that resulted in the execution of this Defendant,  
25 if the facts and the evidence was appropriate do you

1 think you could?

2 A Yeah. I could do that.

3 Q You could do it?

4 A Yes.

5 Q Let me talk to you a little bit about murder  
6 in Texas and the different types of murder so far as the  
7 law is concerned; in Texas there's murder and then  
8 capital murder.

9 Murder is if you intentionally or  
10 knowingly cause someone's death, that's a murder. Now,  
11 that is punishable by five years probation to 99 years  
12 or life in the penitentiary, it's not punishable by  
13 death.

14 On the other hand there's another type  
15 murder called "capital murder", that's the same murder  
16 we talked about plus something else and that "plus  
17 something else" is if a police officer, fireman is killed  
18 in the line of duty, murder done during the commission  
19 of a robbery or burglary or rape or something of that  
20 nature.

21 Are you with me on all this?

22 A Yes.

23 MR. TOWNSEND: There's a sheet  
24 up there that is an indictment -- approach the witness,  
25 Your Honor?



1 THE COURT: You may.

2 MR. TOWNSEND: Leo has got it.

3 If you will read that to yourself and  
4 then I will talk to you about it.

5 Okay?

6 THE POTENTIAL JUROR: Okay.

7 MR. TOWNSEND: That is the  
8 indictment in this case where the State is charging the  
9 Defendant with this crime, can you see after reading that  
10 if the State could prove those charges that that would  
11 be a capital murder rather than just a murder?

12 THE POTENTIAL JUROR: Yes.

13 Q (BY MR. TOWNSEND) A capital murder in Texas,  
14 Mr. Booth, the two choices as to punishment if a person  
15 is found guilty of capital murder are life imprisonment  
16 and the death penalty and the kind of juror we need in  
17 capital murder cases are both people who can be fair and  
18 impartial in making their decision both on guilt and  
19 innocence and then when the appropriate punishment is a  
20 life sentence or the death penalty.

21 In the old days maybe that decision was  
22 just made by the jury going back there and saying, "How  
23 many vote for life sentence and how many vote for the  
24 death penalty", but the way it is done now is there are  
25 -- if a person is found guilty of capital murder then the

1 jury is going to hear some more evidence during what is  
2 called "the punishment hearing" and that being all  
3 different kinds of evidence and when they hear that  
4 evidence then they go back and vote on two questions or  
5 two Special Issues and their answers to those Special  
6 Issues determine whether the defendant receives a life  
7 sentence or death penalty.

8 Now, of course those answers, you would  
9 know what the results of those answers would be. I mean  
10 you will know if you answer the question a certain way  
11 that the defendant will receive the death penalty and you  
12 know if you answer them another way the defendant will  
13 receive the life sentence.

14 But you are just answering those two  
15 questions, you are not saying, "Well, we decide to give  
16 him the death penalty" even though you know what the  
17 result of your answers will be.

18 We have got to have the type of juror  
19 who can set aside their personal maybe feelings at some  
20 point and decide those issues based on the law in the  
21 case and follow that law.

22 Will you do that?

23 A Yes.

24 Q Do you agree to do that?

25 A Yes. I do.

1 Q We all have disagreements with certain areas  
2 of the law but in order to sit on the jury you have got  
3 to be able to follow the law even if it's one you  
4 disagree with.

5 Do you believe that you could do that?

6 A Yes.

7 Q On the first phase of a capital murder case the  
8 decision is, is the person guilty or not guilty, did he  
9 do it, then when you get to that second phase you are  
10 talking about deciding the proper punishment.

11 The kind of juror we need in death  
12 penalty cases are those kind of jurors who can listen to  
13 the evidence and decide after hearing that evidence  
14 whether the person is guilty or not guilty but not make  
15 their decision on punishment until after they have heard  
16 all that evidence in the punishment hearing.

17 Do you believe you could be that kind  
18 of juror?

19 A Yes.

20 Q There is a sheet of paper up here, up there,  
21 it's kind of a flow chart.

22 A (Indicating)

23 Q Yes. That's it right there.

24 That kind -- it's kind of a flow chart,  
25 how a capital murder trial goes.

1                   If you will start at the top up here  
2                   that's the guilt or innocence phase, at that point you  
3                   are going to hear evidence, you are going to make a  
4                   decision, if you decide the defendant is not guilty the  
5                   trial is over, if you decide that the defendant is guilty  
6                   then you go to that next step, the next phase, that's the  
7                   punishment phase -- in the middle of the Page 3.  
8                   (Indicating)

9                   A               Yes.

10                  Q               And then you are going to hear more evidence.

11                         Like I said, that evidence can be of all  
12                   types of variety, you are going to hear evidence of the  
13                   family history of the defendant, you may hear  
14                   psychological evidence, you may hear evidence of past  
15                   criminal history or history of past bad acts committed  
16                   by the defendant, that type of evidence, you know, it  
17                   could be any kind of other type evidence.

18                         What I'm asking you, when you heard this  
19                   evidence during the punishment hearing there is going to  
20                   be some of that evidence that you probably think is  
21                   important and there's going to be some of that evidence  
22                   you think probably is not important.

23                         My question is; would you be the fair  
24                   and impartial juror and be willing to listen and consider  
25                   all the evidence before casting it aside or before

1 deciding it's important?

2 A Yes.

3 Q Would you be able to do that?

4 A Yes.

5 Q You know some people have a bias or prejudice  
6 against, let's say ministers, some people just  
7 automatically think ministers are great or some people  
8 don't like them, the same way with psychologists or  
9 whoever it is.

10 And not only during the punishment phase  
11 but during the entire trial you have got to be able to  
12 be fair and impartial toward all the witnesses even if  
13 they are -- no matter what their job is or lifestyle,  
14 could you do that?

15 A Yes.

16 Q Okay. When you get down -- after you heard  
17 that evidence during the punishment hearing then you are  
18 going to go to Special Issue #1 and in just a minute we  
19 will talk about that, those Special Issues but right now  
20 you are going to answer Special Issue #1, if your answer  
21 is "No" to that then the defendant would automatically  
22 receive a life sentence, if your answer on that is "Yes"  
23 then you go to Special Issue #2.

24 Then in Special Issue #2 if your answer  
25 to that is "Yes" this defendant gets a life sentence, if

1 your answer is "No" the defendant receives the death  
2 penalty so you are going to know even though you are  
3 going to be deciding those, the answers what you think  
4 is the right answer based on the evidence is to those  
5 questions and that's what you are going to be doing but  
6 even though you are doing that you are going to know if  
7 you answer "Yes" to Number One and "No" to Number Two the  
8 defendant gets the death penalty.

9 And you are going to know if you answer  
10 them any other way, any other combination -- when I say  
11 "you", I don't mean "you individually" but the jury as  
12 a whole, if you answer them any other way the defendant  
13 is going to receive a life sentence.

14 Okay. If you will there is a sheet up  
15 there marked "Special Issues", read Special Issue #1 to  
16 yourself and then we'll discuss it for a minute.

17 A Okay.

18 Q Okay. Special Issue #1 to me is, I don't know,  
19 I think it's basically asking you a question about the  
20 future dangerousness of the defendant, is that kind of  
21 the way it looks to you?

22 A Yes.

23 Q Okay. I'm going to point out a couple of  
24 things to you on Special Issue #1, one is that word  
25 "probability", probability means that the State is not

1 required to prove to you beyond a reasonable doubt that  
2 we can guarantee that he would commit another criminal  
3 act of violence or that we are predicting that he would  
4 commit another criminal act of violence but we are  
5 required to prove to you beyond a reasonable doubt that  
6 it's probable so that word "probability" is pretty  
7 important because it's not saying it's a certainty or  
8 anything like that, just that it's a probability.

9 Are you with me?

10 A Yes.

11 Q Some other wording there that is important, at  
12 the end there where at the end of the second line where  
13 it talks about criminal acts of violence, the Defendant  
14 is on trial for capital murder but there are other  
15 criminal acts of violence so it's not required that we  
16 prove to you that he commit another capital murder but  
17 it's probable that he will commit some other criminal act  
18 of violence.

19 There are many other criminal acts of  
20 violence, assault, rape, etcetera, etcetera.

21 Okay. Mr. Booth, on Special Issue #1  
22 as you can see the State just like in the guilt or  
23 innocence phase on Special Issue #1 we are required to  
24 prove that to you beyond a reasonable doubt.

25 Now -- and so basically I believe that

1 Special Issue #1 is pretty much a fact issue, you know,  
2 can we prove that to you or not?

3 And -- but it's a different issue than  
4 guilt or innocence, you know, you have already heard the  
5 guilt or innocence information evidence and you have  
6 decided that the defendant is guilty then you have heard  
7 all the evidence at the punishment hearing and after  
8 hearing all that evidence then you go back and you decide  
9 and you can -- you don't have to close your mind to that  
10 evidence you heard during the guilt or innocence phase,  
11 you can also use that in formulating your opinion but you  
12 have also got to consider that evidence you heard during  
13 the punishment hearing.

14 And my question to you is that, you  
15 know, I have had jurors say, "Well, if I find a person  
16 guilty of capital murder I am automatically going to  
17 answer 'Yes' on Special Issue #1, that he's probably  
18 going to be dangerous in the future."

19 And you can see why they would not be  
20 qualified or because they are not being fair and  
21 impartial and that they have already made their minds up  
22 before they ever hear that evidence at the punishment  
23 hearing.

24 Could you withhold your determination  
25 on Special Issue #1 until you have had the opportunity



1 to listen and consider all that evidence at the  
2 punishment hearing?

3 A Yes.

4 Q Okay. Special Issue #2, if you would read that  
5 over and we'll talk about it.

6 A Okay.

7 Q In Special Issue #2 that is -- the wording to  
8 that is sort of complicated, what it means to me  
9 basically is, okay, we have already decided that this  
10 person is guilty of capital murder and we have already  
11 decided that he's probably dangerous in the future  
12 because if you decided that he wasn't going to be  
13 dangerous then, you know, you wouldn't be looking at  
14 Special Issue #2, he would have already received a life  
15 sentence?

16 A Yes.

17 Q So he's guilty of capital murder, he's probably  
18 dangerous in the future, Special Issue #2 basically is  
19 just -- and that's not an issue we have to prove to you  
20 beyond a reasonable doubt or anything, it's just kind of  
21 your opinion, the jury's opinion is what it is, your  
22 opinion on whether there is sufficient mitigating  
23 evidence or circumstances that would cause you to believe  
24 that it would be proper to give this person a life  
25 sentence rather than the death penalty.

1                   And I can't tell you what those  
2 circumstances are, circumstances might be. That's just  
3 for the jury to decide based on the evidence you heard  
4 during the guilt or innocence phase and based on the  
5 evidence you heard during the punishment hearing.

6                   My question to you is that I have heard  
7 jurors say, "Well, you know, I have decided this person  
8 is guilty of capital murder, I have already decided, I  
9 have already decided that he's probably going to be  
10 dangerous in the future so I'm going to automatically  
11 vote 'No' to Number Two because I want to make sure that  
12 he gets the death penalty."

13                   You see, they are not a qualified juror  
14 because they are not being fair and impartial because  
15 they are not waiting until they have heard all the  
16 evidence and they are not going back and reconsidering  
17 all the evidence before making their decision on Special  
18 Issue #2.

19                   Could you take that Special Issue #2  
20 separately and go back and sort of reconsider all that  
21 evidence before you make your decision on Special Issue  
22 #2?

23                   A           Yes.

24                   Q           Okay. You know, mitigating evidence is  
25 evidence that can be of all sorts of stuff and that's why

1 I was talking about awhile ago something that you  
2 consider to be mitigating, it might not, you know, we  
3 might hear the same piece of evidence and have different  
4 feelings about it. You know, some people might think  
5 that if a person was intoxicated when they committed a  
6 crime they are not quite as responsible as they would be  
7 otherwise. Well, other people might think that wouldn't  
8 make any difference so you and another juror might hear  
9 the same evidence and might not agree as to whether that  
10 was important or not. But the important thing here is  
11 not your opinion on any particular piece of evidence,  
12 whether it's the age of the defendant, whether he was  
13 intoxicated or not, whether -- anything about family  
14 history or not, it's not important and we are not going  
15 to pin you down or ask you what you think is important  
16 but either myself or the Defense Attorney may at some  
17 point as you if you will listen and consider that  
18 evidence?

19 A Yes.

20 Q Whatever it is, could you do that?

21 A Sure.

22 Q Mr. Booth, the law tells us that and I believe  
23 the Court will instruct you if you are a juror on this  
24 case that prior to your deliberations you will receive  
25 some instruction from the Court and I believe among the

1 instructions you would receive will be in determining  
2 the guilt or innocence or determining the type of  
3 punishment that you would not consider the possibility  
4 of parole in any way, instead go -- let's just talk about  
5 the sentencing, in deciding whether the defendant should  
6 receive a life sentence or death penalty you are just to  
7 presume that a life sentence is a life sentence and not  
8 consider any possibility of parole in making your  
9 decision.

10 Could you do that?

11 A Yes.

12 Q When talking about Special Issue #1  
13 particularly you are talking about that future  
14 dangerousness issue there, in answering that question  
15 "Yes" or "No", could you put aside -- I mean, you know,  
16 we don't expect you to put these things out of your mind,  
17 when I say "Putting aside" you are not expected to put  
18 it out of your mind but you are expected to not to  
19 consider that in making your decision.

20 Could you do that to Special Issue #1?

21 A Yes.

22 Q And Number Two?

23 A Yes.

24 Q And I want to talk to you about some more --  
25 some general areas of the law rather than just capital

1 murder; the punishment range in a murder case, as I said  
2 earlier is five years probation to 99 years in the  
3 penitentiary, let's just say, for instance, that you are  
4 a juror on a capital murder trial and you decided that  
5 the State has proven to you beyond a reasonable doubt  
6 that the defendant committed the murder but they didn't  
7 prove to you beyond a reasonable doubt that there was a  
8 robbery committed.

9 Then you will be faced with a decision  
10 where you find the defendant guilty of murder but not  
11 capital murder, are you with me?

12 A Right.

13 Q Well, if you find a defendant guilty of murder  
14 then the range of punishment is not the same as it was  
15 for capital murder, it's from five years probation to 99  
16 years or life if that's your decision, then you have to  
17 look at that range of punishment.

18 Some murders might be extremely vicious,  
19 some murders might be an entirely different situation.  
20 I think the Judge mentioned mercy killing a couple of  
21 weeks ago.

22 A Right.

23 Q Could you consider the full range of  
24 punishment?

25 When I say that you don't have to agree

1 with that full range of 99 to five years probation but  
2 could you consider the full range of punishment?

3 A Yes.

4 Q Okay. The State of Texas in criminal cases  
5 is required to prove our case beyond a reasonable doubt,  
6 that is -- that's a term that you are familiar with?

7 A Yes.

8 Q Of course that's not beyond all doubt but it's  
9 beyond a reasonable doubt, that's our burden of proof.

10 And the important thing to remember  
11 about that is that that burden rests with us, we have got  
12 to prove that the defendant in any criminal case, the  
13 defendant is guilty, the Defense on the other hand, they  
14 are under no burden at all to prove that the defendant  
15 is innocent.

16 A Right.

17 Q And is that something that you understand and  
18 agree with?

19 A Yes.

20 Q Okay. In that burden of proof along with that  
21 goes something that is called the "Fifth Amendment  
22 privilege" and that basically is that the defendant has  
23 the right not to testify, do you remember that?

24 A Yes.

25 Q Are you familiar with that?

1 A Yes.

2 Q The important thing is that we have got to have  
3 those people on the jury who will make your determination  
4 without using any way in making their decision on guilt  
5 or innocence the fact that the defendant may have chosen  
6 not to testify.

7 That's kind of human nature to be  
8 curious as to why a person didn't testify or maybe think  
9 that you would like to testify if you are in that  
10 position or something like that.

11 A Right.

12 Q And again, we are not expecting you to put that  
13 out of your mind but you have got to be able to be a fair  
14 and impartial juror you have got to be able to give that  
15 no consideration when you are making your decision  
16 because after all your decision should be based strictly  
17 on the evidence presented, not on anything that you don't  
18 hear.

19 Could you do that?

20 A Yes.

21 Q Mr. Booth, in a criminal trial both during the  
22 punishment hearing and during the main part -- the guilt  
23 or innocence phase of the trial you are going to hear  
24 witnesses of all shapes and sizes and some of them might  
25 be psychologists, some of them might be peace officers,

1       you name it.

2       A           Right.

3       Q           The important part is that we have got to have  
4       the type jurors who can start each witness out on the  
5       same spot and not -- not give a witness a head start in  
6       believing them or in thinking that their testimony is  
7       important or unimportant, just based on who they are or  
8       what they look like or what job title they may have.

9                   Could you do that?

10      A           Yes.

11      Q           Mr. Booth, in some criminal cases you will have  
12      written statements that are presented into Court, written  
13      statements from the defendant.

14                   Those statements, once they are -- once  
15      you have heard those statements, let's assume that this  
16      statement basically amounts to what you might call a  
17      "confession."

18                   If you heard a statement like that I  
19      believe the Court or if that was presented into evidence  
20      I believe the Court will instruct you that you would not  
21      use that statement as evidence unless you found beyond  
22      a reasonable doubt that that statement was both truthful  
23      and voluntary.

24                   And, you know, "voluntary" when you and  
25      I are just shooting the bull might mean one thing,



1 "voluntary" under the law, you know, it means that the  
2 person was not coerced.

3 A Right.

4 Q That they would have an opportunity to have  
5 their Miranda Rights, I think you know basically that the  
6 law requires that?

7 A Yes.

8 Q But anyway the Judge will instruct you on what  
9 would constitute being voluntary in any particular case.  
10 The important thing to remember is to be a fair juror.

11 To be qualified you have got to be able  
12 to listen to that testimony about the confession, decide  
13 whether or not that confession is truthful and voluntary  
14 and after that decision is made you decide that that  
15 beyond a reasonable doubt we have not proved that  
16 confession was voluntary, even if you believe it to be  
17 truthful if you decide that it was not voluntary you have  
18 got to be able to base your decision on the other  
19 evidence and base your decision in no way whatsoever on  
20 that statement.

21 Now, again that's one of those  
22 situations where we can't expect you to put that out of  
23 your mind.

24 A Right.

25 Q But we do -- we do have to have those type

1 jurors that while they may not be able to put it out of  
2 their mind they can make their decision based on the  
3 evidence that was presented, if they decide it's  
4 inadmissable and not that statement in any way in making  
5 their decision.

6 Can you do that?

7 A Yes.

8 THE COURT: Thirty minutes.

9 MR. TOWNSEND: Not use that  
10 statement as evidence, you know, in deciding your answer  
11 to Special Issue #1 or Issue #2?

12 THE POTENTIAL JUROR: Yes.

13 Q (BY MR. TOWNSEND) Okay. We showed you a  
14 little earlier what is an indictment in this case and I  
15 think the Judge told you a couple of weeks ago that  
16 certainly an indictment is just a charging instrument and  
17 is not evidence of anything, cannot be used as evidence?

18 A Right.

19 Q You would not do that, would you?

20 A No.

21 Q Mr. Booth, I haven't given you an opportunity,  
22 I have done most of the talking, is there any question  
23 you might have of me or of the Judge or is there any --  
24 just things that you feel like you might need to tell us  
25 that you would relate to your jury service that we

1 haven't given you an opportunity to say?

2 A I don't believe so. No.

3 MR. TOWNSEND: I'll pass the  
4 juror.

5 THE COURT: Mr. Old, Mr.  
6 Hinson.

7  
8 VOIR DIRE EXAMINATION

9 BY MR. HINSON

10  
11 Q Thank you, Your Honor.

12 Good morning, Ronny.

13 A Hi.

14 Q Let me ask you, you understand that I represent  
15 Billy Wardlow in this case or me and Mr. Old represent  
16 Mr. Wardlow in this case, he has been charged with  
17 capital murder, do you understand that?

18 A Right.

19 Q And what we do is look for fair and impartial  
20 jurors that can sit on Mr. Wardlow's case without taking  
21 any other evidence into consideration.

22 I guess where I -- what I'm asking you  
23 some questions about probably would relate to your wife  
24 Cathy Booth?

25 A Right.

1 Q Now, you understand my representation of or  
2 explain, I guess to the Court my involvement in the case  
3 involving your wife, would you explain that to the Court?

4 A Who?

5 Q Excuse me?

6 A Are you talking about you?

7 Q Yes.

8 A There is a -- well, I'm not sure what is going  
9 to take place with that because I'm not sure -- there is  
10 some things that is in the process that don't concern,  
11 you know, we have been involved in a custody hearing.

12 THE COURT: You and your wife?

13 THE POTENTIAL JUROR: Yes.

14 Me and my wife and this other guy and there's some things  
15 that happened during that trial deal that are coming up  
16 and of course when you got a custody deal like we have  
17 got you have got one over here and constant back and  
18 forth, back and forth.

19 And I think the other "party" I guess  
20 you could call them, has hired Lance as his attorney.

21 THE COURT: Your wife's ex-  
22 husband or father of the child? What is his name?

23 THE POTENTIAL JUROR: Dale  
24 King.

25 THE COURT: "Dale King?"

1 THE POTENTIAL JUROR: He hired  
2 him, there has been some papers filled but -- no papers  
3 filed yet, some papers were filed but nothing has come  
4 of it yet, I'm not sure if anything -- we will find out  
5 within the next month.

6 THE COURT: Other than support  
7 for your wife are you involved in the Court case? Are  
8 you a named party, are you trying to get visitation or  
9 custody?

10 THE POTENTIAL JUROR: No. All  
11 this is done settled, all this is bickering back and  
12 forward, what the deal is after the year you can have a  
13 motion to modify, she filed a motion to modify so she can  
14 have standard visitation like she was awarded, he says  
15 she can't have it, she wants it, that's what the whole  
16 deal is.

17 THE COURT: If she prevails,  
18 if she is the winner because of something that Mr. Hinson  
19 does for her is that going to create a problem between  
20 you and Mr. Hinson?

21 THE POTENTIAL JUROR: No.

22 THE COURT: Are you going to  
23 hold it against Mr. Wardlow, that's the basic --

24 THE POTENTIAL JUROR: No.  
25 He's representing him, she is representing herself so,

1 "No."

2 THE COURT: Do you have any  
3 ill will toward Mr. Hinson at all because of him?

4 THE POTENTIAL JUROR: No. I  
5 feel sorry for him but I don't have any ill will for him.

6 MR. HINSON: What is your  
7 personal opinion of Dale King?

8 THE POTENTIAL JUROR: What is  
9 my personal opinion of Dale King?

10 Q (BY MR. HINSON, CONTINUING VOIR DIRE  
11 EXAMINATION) Yes.

12 A Do you -- I don't think you would want to know  
13 my personal opinion of him.

14 Q Is it positive or negative?

15 A It's not positive, it's the total opposite of  
16 positive.

17 Q As you consider evidence in this case -- let  
18 me change ears, I guess really maybe we can see three  
19 parts to a capital case, the first part being the jury  
20 selection, the second part being the guilt or innocence  
21 of the defendant and the third part being the punishment  
22 phase.

23 As you consider evidence in the guilt  
24 or innocence of Mr. Wardlow do you think knowing my  
25 representation of Dale King is that going to come into

1 play in any manner?

2 A You representing Dale is not going to have any  
3 effect whatsoever on this.

4 Q My representation of Dale King in a family law  
5 matter and you being involved in this case, is your wife  
6 going to have any influence on you that may effect Mr.  
7 Wardlow in this matter?

8 Can you think of any coercion that she  
9 might place on you?

10 A No.

11 Q I may have asked this in a different way, say  
12 you were deliberating, assuming that you were a juror and  
13 you were deliberating on the evidence that was presented  
14 whether or not Mr. Wardlow was guilty or not, is there  
15 a slight possibility that based on my representation of  
16 someone that you have a negative attitude about will that  
17 come into play in any manner?

18 A No. No. Negative.

19 Q Not the slimmest possibility?

20 A Anything that you have to do is separate from  
21 this, it's separate from this, you know.

22 Q You could disregard this entire matter?

23 A Yes, sir.

24 Q When you sat and heard this case?

25 A Yes, sir.

1 Q And my presentation of this gentleman's case,  
2 assuming that you were a juror, whatever evidence I  
3 presented to you, you could consider just the context of  
4 this trial?

5 A Sure.

6 Q Let me ask you sort of hypothetically, this  
7 case may be four to six weeks before it gets to trial.

8 A Yes.

9 Q Let's assume that between these four to six  
10 weeks the family matter -- the family law matter between  
11 Dale King and your wife came up?

12 A Yes.

13 Q And your wife, let's assume the Judge ruled  
14 adversely to her, she did not get what she requested.

15 A Yes.

16 Q Assuming that possibly the Judge awarded  
17 attorney fees to Dale King, assume the worst possible  
18 situation.

19 A Okay.

20 Q Assuming -- let's assume that he did decrease  
21 visitation instead of increase visitation, is that going  
22 to have any effect of you serving as a juror after that  
23 point?

24 A No. It's not.

25 Q You are going to be able to set aside any



1 detriment that your wife may receive from a Court order  
2 in a family law matter between she and Dale King and then  
3 later on come in and hear this evidence that I or Mr. Old  
4 may present to you and you will consider that evidence  
5 strictly from this case?

6 A Right.

7 Q Now, Mr. Booth, there's a Witness List up  
8 there, just a -- I will just ask you to take a minute and  
9 read down through here and as you read them if you see  
10 one that you know or are acquaintance of or heard their  
11 name would you just tell me who that is?

12 A I don't know any of them.

13 Q Now, I have a three-page list of witnesses,  
14 have you looked over the entire three-page list?

15 A Right.

16 Q And each name that is listed on those three  
17 pages you have no personal knowledge of any of those  
18 person's names?

19 A No. I don't know any of them. No.

20 Q Mr. Townsend asked you a little bit about or  
21 went over with you I guess lesser included offense of  
22 murder, there is capital murder, murder, that could also  
23 be considered by a juror, also went over the range of  
24 punishment in a murder case, a five to 99 years in the  
25 State penitentiary or life sentence.

1                   And I represent to you that if you found  
2 the defendant guilty of murder that if you assess less  
3 than 10 years or less as that defendant's punishment that  
4 he could receive probation?

5           A           All right.

6           Q           Now, in this or in my -- I guess in any case  
7 if you were sitting on that case and you found the  
8 defendant guilty of murder, not capital murder, could you  
9 consider the aspect of that person being placed on  
10 probation?

11          A           Yes.

12          Q           And you understand probation, there would be  
13 no jail time, they would be placed back into society on  
14 probation and see their probation officer monthly  
15 usually?

16          A           Yes.

17          Q           From looking at your questionnaire which I  
18 think affirms your answer that you consider the death  
19 penalty appropriate under the proper circumstances?

20          A           Right.

21          Q           Is that still your opinion here today?

22          A           It is.

23          Q           Of course we mention 10 years as 10 years or  
24 less, as far as considering five years if you found a  
25 person guilty of murder and not capital murder could you

1 consider as punishment for that crime a five year  
2 probated sentence?

3 A Yes. If the circumstances, you know, called  
4 for it. Yeah.

5 Q What kind of circumstances would call for that  
6 kind --

7 MR. TOWNSEND: Your Honor, I'm  
8 going to object. I don't believe that he's required to  
9 tell under which situation he would give a certain  
10 sentence.

11 THE COURT: Sustained.

12 MR. HINSON: But, Mr. Booth,  
13 on the document marked "Special Issues", did you find  
14 that document?

15 THE POTENTIAL JUROR: Yes.

16 Q (BY MR. HINSON) And I understand that you have  
17 read Special Issue #1?

18 A Right.

19 Q From the evidence presented you would find  
20 beyond a reasonable doubt that there is a probability  
21 that the defendant would commit criminal acts of violence  
22 that would constitute a continuing threat to society.

23 What that says is not that there is a  
24 probability but that you find beyond a reasonable doubt  
25 that there is a probability?

1 A Yes.

2 Q Would you agree with me that that would be a  
3 higher burden than just a mere probability --

4 MR. TOWNSEND: Your Honor, I  
5 want to object. I don't believe that meets the standard  
6 there, the legal standard is "probability", the State is  
7 required to prove that probability beyond a reasonable  
8 doubt.

9 THE COURT: Sustained.

10 I will let you inquire as to what  
11 probability means to him.

12 MR. HINSON: You see the  
13 highlighted "probability"? (Indicating)

14 THE POTENTIAL JUROR: Yes.

15 Q (BY MR. HINSON) What would be your personal  
16 definition of "probability?"

17 A "Probability" is going to be, I guess you  
18 consider -- I guess you know a person's past or whatever,  
19 whether or not they are going to do something I guess if  
20 you --

21 THE COURT: He's asking you  
22 what "probability" means.

23 Does it mean "more likely than not?"

24 THE POTENTIAL JUROR: I don't  
25 remember. It means more than likely going to happen,

1 yes. "Probability" means it's pretty sure it's going to  
2 happen sooner or later.

3 MR. HINSON: On Special Issue  
4 #2, some question there about mitigating circumstances  
5 to warrant whether a sentence of life rather than a death  
6 sentence should be imposed.

7 I guess -- what is your definition or  
8 what would you say "mitigating evidence" would cause --  
9 would be?

10 THE POTENTIAL JUROR: What  
11 would be "mitigating evidence?"

12 It would be -- well, you want to know  
13 what I think "mitigating" is?

14 Q (BY MR. HINSON) Yes.

15 A Just special circumstances of whatever was  
16 happening at the time or whatever something --

17 Q Would "mitigating circumstances" be for or  
18 against someone?

19 A It would depend on -- it would depend on the  
20 situation on what was -- whatever happens, I mean it's  
21 kind --

22 Q In regard --

23 A "Mitigating", I can think of kind like he says  
24 when he was here the first time, if I walked in and  
25 caught my wife in bed with someone else I might shoot

1 both of them, to me it would be kind of mitigating, she  
2 was screwing around, that would be kind of a circumstance  
3 there that I would take them both or something like that.

4 Q In considering a criminal act offense would  
5 mitigating evidence to you be someone's age, whether it  
6 be a young age or old age?

7 MR. TOWNSEND: I object, Your  
8 Honor, he's not required to tell us what he considers  
9 mitigating or what he considers not mitigating.

10 It's an improper question, "Would he  
11 consider that?"

12 THE COURT: Agree with  
13 Counsel.

14 You may ask him whether he would  
15 consider it or whether he would just automatically  
16 exclude that.

17 MR. HINSON: Regarding  
18 mitigating evidence; would you have the fact of the  
19 defendant's age as mitigating evidence as to his  
20 blameworthiness for the crime, for the -- as it is stated  
21 in the indictment?

22 THE POTENTIAL JUROR: You  
23 know, any -- you know stuff that was put up, yeah, I  
24 would consider it.

25 Q (BY MR. HINSON) Would evidence, whatever that

1 evidence might be of the defendant's family history,  
2 would you consider that as mitigating evidence?

3 A Yes.

4 Q To the offense?

5 A Yes.

6 Q Assuming that there was psychological evidence  
7 presented to you, would you consider that as mitigating  
8 evidence?

9 MR. TOWNSEND: Your Honor, I  
10 want to object to that again, the form of his question  
11 is, "Would he consider something as mitigating evidence",  
12 I think what he's asking, whether it's intended or not,  
13 what he's asking the juror is will he consider something  
14 to be mitigating?

15 THE COURT: I agree that the  
16 way it's being asked may very well be trying to commit.  
17 I don't think that's your intent, Mr. Hinson.

18 MR. HINSON: No, Your Honor.

19 THE COURT: But I think the  
20 way the question was asked it may very well be trying to  
21 commit the juror.

22 MR. HINSON: Okay.

23 THE COURT: I think it would  
24 be more appropriate if you would just maybe ask the juror  
25 if in considering whether or not there was mitigating

1 evidence if he will consider such factors as a; family  
2 background and whatever else you wish.

3 MR. HINSON: All right.

4 Mr. Booth, if there were mitigating  
5 evidence presented to you would you consider such  
6 factors?

7 I believe you already stated that you  
8 would consider the factors of the age of the defendant?

9 THE POTENTIAL JUROR: Yes.

10 Q (BY MR. HINSON) Would you consider the fact  
11 of such as family history of the defendant?

12 A Yes.

13 Q Would you consider psychological evidence?

14 A Yes.

15 Q Assuming that this evidence was presented?

16 A Yes, sir.

17 Q You can consider that?

18 A Yes.

19 Q Can you consider religious history of the  
20 defendant?

21 A Yes.

22 Q Could you consider the defendant's educational  
23 background?

24 A Yes.

25 Q Mr. Booth, you went over briefly a little bit



1 about the Fifth Amendment and you understand the Fifth  
2 Amendment of the United States Constitution allows a  
3 defendant the right to remain silent in a criminal trial?

4 A Right.

5 Q If the defendant did not testify in the guilt  
6 or innocence phase of this trial how would that effect  
7 your deliberation?

8 A I don't think it would.

9 Q If the defendant did not testify in either the  
10 guilt or innocence stage of the trial and neither the  
11 punishment phase of the trial could you still consider  
12 a life sentence or the death penalty in this case?

13 A Yes.

14 Q If the defendant did not testify in either the  
15 guilt phase or punishment phase of the trial could you  
16 still consider -- you understand the indictment is --  
17 it's a capital murder indictment, could you still  
18 consider the lesser included offense of murder?

19 A Yes.

20 Q Could you consider the minimum punishment of  
21 five years probation?

22 A Yes.

23 Q You talked a little bit about the death  
24 penalty, a little bit about life sentence as the two  
25 options if the defendant was found guilty of capital

1 murder, you went over that a little bit with Mr.  
2 Townsend?

3 A Right.

4 Q And based on your questionnaire that the death  
5 penalty would be appropriate under the proper  
6 circumstances are you saying that even if you found the  
7 defendant guilty, and I believe you may have answered  
8 this question, even if he was found guilty of capital  
9 murder you could still consider the punishment phase to  
10 give the defendant either a life sentence or the death  
11 penalty, either one?

12 A Right.

13 THE COURT: It has been 32  
14 minutes.

15 MR. HINSON: And assuming that  
16 you were on the jury that found the defendant guilty of  
17 capital murder, would there be any automatic finding in  
18 your mind that he would be a threat to society in the  
19 future based on that decision and punishment -- I mean  
20 in the guilt or innocence?

21 THE POTENTIAL JUROR: No.

22 Q (BY MR. HINSON) So once you found or as part  
23 of the jury you found the defendant guilty of capital  
24 murder you could come back and look at the evidence  
25 presented to you at the punishment phase and determine

1 from all the evidence whether or not there would be a  
2 continuing threat for Mr. Wardlow?

3 A You know, after taking into all consideration  
4 of everything, yes.

5 Q Consider it mitigating evidence if it were?

6 A Depending on what all were there, make a  
7 decision off of that.

8 Q You wouldn't make a decision at the guilt  
9 phase, though?

10 Do your beliefs cause you to be more  
11 inclined if you found a person guilty of capital murder,  
12 your feelings on the death penalty, would these cause you  
13 to find a person or cause you to be more inclined to find  
14 a person a future threat to society a little more one way  
15 or the other?

16 A No.

17 Q If you found the defendant guilty how would the  
18 prospect of handing out the death penalty as part of the  
19 jury effect your deliberations?

20 A Say that again.

21 Q Once you get through the guilt phase of the  
22 trial?

23 A Right.

24 Q The defendant was found guilty of capital  
25 murder, you are looking at two punishments, a life

1 sentence versus the death penalty?

2 A Right.

3 Q And you state under the proper circumstances  
4 that the death penalty is warranted in some cases?

5 A Yes.

6 Q Is there any effect on you regarding you as  
7 part of the jury handing down a death penalty that would  
8 effect your deliberations in that manner?

9 A No.

10 Q Now, Mr. Booth, on your questionnaire on Page  
11 10 at the bottom you stated that you didn't have any  
12 personal feeling about law enforcement in general or  
13 police officers in particular but on the previous page  
14 you listed hey, it requests, list three men and three  
15 women whom you most respect and you listed John Moss and  
16 Ricky Poole, "John Moss" being the Sheriff of Titus  
17 County, "Ricky Poole" being the Chief Deputy.

18 What is your relationship with John  
19 Moss?

20 A Just a friend.

21 Q Is he a social acquaintance?

22 A No. We are just around town or whatever, you  
23 know, I have known him ever since I have lived here,  
24 about 20 years.

25 Q And Ricky Poole, what is your relationship?

1           A           About the same, just known him from ever since  
2           I moved here, you know, when I was in high school running  
3           around, that type stuff. Just a friend.

4           Q           Would your knowledge of them effect your  
5           ability to be fair and impartial in hearing the evidence  
6           here that will be presented in this trial?

7           A           No.

8           Q           In this trial there will be several police  
9           officers possibly -- probably the Sheriff of Morris  
10          County, other deputies that will testify, would you give  
11          their testimony any more credibility than you would the  
12          person off the street?

13          A           No.

14          Q           So you are saying that any witness, assuming  
15          that you were a juror, any witness that takes the witness  
16          stand, they will all start on the same -- same position?

17          A           Right.

18          Q           And you will determine their credibility based  
19          on what they say from the witness stand?

20          A           Right.

21          Q           Whether or not they are the Sheriff of Morris  
22          County or a family member of Mr. Wardlow?

23          A           They are all the same.

24          Q           Have you looked over the Witness List for  
25          Morris County? Do you know any officers in Morris

1 County?

2 A No. I don't.

3 Q Any constables?

4 A No, sir.

5 Q Have you or friends or relatives ever been  
6 involved in a criminal case either as a victim or  
7 defendant or witness in that case?

8 A No.

9 Q Are you related to anyone or know anyone that  
10 died as a result of suspected criminal activity?

11 A No.

12 Q Now, you stated at the time that your  
13 questionnaire was filled out that you didn't have any  
14 knowledge of the facts of this case through any source?

15 A No.

16 Q Have you received any knowledge since the time  
17 you filled out the questionnaire?

18 A No. I haven't.

19 Q And you state that the decedent, Mr. Carl Cole,  
20 that you didn't have any personal knowledge of him during  
21 his life?

22 A No.

23 Q Has anyone discussed Mr. Cole with you since  
24 that time?

25 A No.

1 Q Do you have an opinion as to whether or not a  
2 person is probably guilty because of a criminal charge  
3 has been brought against that person?

4 A No. Just because somebody is charged with  
5 something doesn't mean anything.

6 Q You are willing to start with the proposition  
7 that they are presumed innocent whatever they are charged  
8 with?

9 A Right. Right.

10 Q Some people have religious convictions or just  
11 personal convictions that an eye for an eye or tooth for  
12 a tooth is proper punishment.

13 A Yes.

14 Q Is life for a life, is that inside you in any  
15 way, that proposition?

16 A No. Not me. I mean not just cut and dried.  
17 No.

18 Q So based on your questionnaire you stand by or  
19 you still would stand by your --

20 A It's whatever I put on there, I forget how I  
21 put it.

22 Q That the death penalty would be proper in some  
23 situation even where it may not be appropriate in other  
24 cases where a victim may have died as a result?

25 A Right. Right.

1 Q You talked a little bit about the indictment,  
2 you looked at the indictment and you would consider the  
3 indictment as no evidence in this case?

4 A No. It's not.

5 Q As you considered the punishment phase of the  
6 capital murder trial where the defendant was found guilty  
7 of capital murder and you know that you are required to  
8 answer those Special Issues and you have looked at those  
9 before, you answer those Special Issues, would you  
10 consider the death penalty first and then the life  
11 sentence?

12 A No.

13 Q Would you consider them both at the same time  
14 and give them equal consideration before answering  
15 Special Issue?

16 A Yes.

17 Q Could you consider a life sentence in a capital  
18 murder case where the defendant is found guilty?

19 I believe I asked you -- where the  
20 defendant did not testify?

21 A If I understood that right you mean if he  
22 didn't testify would I hold that against him?

23 Q Yes.

24 A No.

25 Q If there were no mitigating circumstances could



1       you still consider a life sentence versus the death  
2       penalty?

3       A           Yes.

4       Q           There is an exhibit up there that is  
5       typewritten on one page, it's "Number 6", about halfway  
6       down that page or a little more than half the paragraph  
7       starts "Reasonable doubt is a doubt based on reason and  
8       common sense after a careful and impartial consideration  
9       of all the evidence in the case, it is the kind of doubt  
10      that would make a reasonable person hesitate to act in  
11      the most important of his own affairs."

12                   Would you accept that reasonable doubt  
13      definition as your own definition?

14      A           Yes.

15      Q           And you would require proof beyond a reasonable  
16      doubt based on that definition?

17      A           Yes.

18      Q           As we have talked over this and as you filled  
19      out these and have been present for our jury voir dire  
20      have you formed any opinion as to the guilt of the  
21      defendant?

22      A           No.

23      Q           During the course of a criminal trial and the  
24      punishment phase there might be evidence of prior bad  
25      acts or prior convictions of a defendant, could you

1 consider the age and seriousness of those offenses of  
2 prior bad acts in assessing whether or not the defendant  
3 would be a continuing threat to society?

4 A Yes.

5 Q Do you have any opinion regarding repeat  
6 offenders?

7 A No. Not really.

8 THE COURT: Five minutes.

9 MR. HINSON: Mr. Booth, I note  
10 that you were unemployed when you filled this out?

11 THE POTENTIAL JUROR: Yes.

12 Q (BY MR. HINSON) Are you still unemployed?

13 A So far as full time job, yes, sir.

14 All I do right now is substitute teach.

15 Q Is that the Titus County Mount Pleasant  
16 Independent School District?

17 A Chapel Hill and the surrounding areas.

18 Q Are you able to make you payments on what you  
19 are making?

20 A Yes. Between me and my wife we make it.  
21 Everything I have got is paid for.

22 THE COURT: Must be nice.

23 MR. HINSON: If you were  
24 involved as a juror in this case for let's say maybe two  
25 weeks?

1 THE POTENTIAL JUROR: Yes.

2 Q (BY MR. HINSON) You weren't able to work as  
3 a substitute teacher, would that be any particular  
4 hardship on your case?

5 A No. They don't pay that much, it wouldn't be  
6 that big a loss.

7 Q Now, in your own opinion based on everything  
8 that we have presented to you, we have talked about your  
9 knowledge of the life sentence versus the death penalty  
10 and what a life sentence in years may mean, the parole  
11 possibility?

12 A Yes.

13 Q Based on your own life experiences and whatever  
14 limited knowledge of this case that you have would that  
15 cause you to lean toward finding the defendant guilty of  
16 this crime?

17 A No.

18 Q Would it cause you to lean toward assessing the  
19 death penalty in this case?

20 A No.

21 Q And as we talked about previously regarding the  
22 matter with your wife, is it still your position that you  
23 could be fair and impartial as you sat, assuming that you  
24 were selected as a juror, that you sat as a juror, that  
25 you could make your decision an impartial and honest

1 decision based on the evidence presented to you during  
2 the course of this trial?

3 A Because of the deal between us?

4 Q Right.

5 A Yeah. Because this deal between you, you know  
6 as well as I do that won't come up for months, by the  
7 time you get through filing stuff and we get through  
8 filing stuff that won't happen for months, this will be  
9 long since over with.

10 Q Whatever feelings you may have for my  
11 representation in this matter your wife's father of her  
12 child you would have no -- no ill feeling toward me as  
13 we presented evidence in this case?

14 A No. No.

15 Q Has Mr. Old represented Cathy Booth in the  
16 past?

17 A Yes. He has. Yeah.

18 Q Is there anything in that representation that  
19 would effect your decision-making ability in this case?

20 A No.

21 Q Would Mrs. Booth, Cathy Booth put any pressure  
22 on you to find in such a way as to possibly embarrass Mr.  
23 Old or myself?

24 A No.

25 Q Mr. Booth, I notice that you stated that you

1       were a moderate Democrat, is that still accurate?

2                       I understand the difference between a  
3       liberal and moderate and conservative.

4       A               Yeah.

5       Q               You put yourself midstream.

6                       What is your particular line of work  
7       that you usually do?

8       A               Mainly it's mainly in the sales deal, when it's  
9       selling I have sold insurance for four or five years, we  
10      had a furniture store in Tyler, sold furniture, mainly  
11      selling.

12      Q               One question I didn't ask you is regarding Mr.  
13      Townsend and Mr. Lee; do you have any personal knowledge  
14      of Mr. Townsend or Mr. Lee in any manner?

15      A               No. I don't.

16      Q               Never been represented by either one of them  
17      in any capacity?

18      A               No.

19      Q               Do you know anyone that has ever been  
20      represented by either one of them in any capacity?

21      A               Not that I can think of. No.

22      Q               Do you actually know where they are from?

23      A               Daingerfield, I think.

24      Q               We talked a little bit about Mr. Cole, the  
25      decedent, do you know where this -- or where the decedent

1       resided at?

2       A           No. I don't.

3       Q           Are you familiar with Cason very much?

4       A           I just know where it is.

5                   THE COURT: Time to wrap it  
6 up, Mr. Hinson.

7                   MR. HINSON: Do you have any  
8 friends or family in Cason?

9                   THE POTENTIAL JUROR: No.

10                   MR. HINSON: Pass the witness,  
11 Your Honor.

12                   THE COURT: Sir, if you will  
13 step down and go back into the waiting area I will bring  
14 you back in a moment or send directions to you.

15                   THE BAILIFF: Watch your step.

16  
17                   (The following occurred outside the  
18 presence and hearing of the potential juror:)

19  
20                   THE COURT: Does the State  
21 have any challenge for cause?

22                   MR. TOWNSEND: No, Your Honor.

23                   THE COURT: Mr. Hinson, do you  
24 have any challenges?

25                   MR. HINSON: No, Your Honor.

1 THE COURT: All right. Tell  
2 Mr. Booth that we will let him know something toward the  
3 end of next week about his jury service and thank him for  
4 coming in.

5 I don't think we have time to finish the  
6 next guy before lunch, we also have two to go.

7 From what you told me yesterday you  
8 don't see any reason that either one of them will be  
9 particularly quick, is that still the way you all feel?

10 We have got two left from this morning,  
11 two from the afternoon, we can't do four this afternoon  
12 so I guess we should cancel the two for this afternoon.

13 Bobby, just call them and tell them.

14 THE DISTRICT CLERK: I will  
15 see if I can get hold of them, it may not be possible to.

16 MR. TOWNSEND: Your Honor,  
17 this Mr. Alexander --

18 THE COURT: The police  
19 officer?

20 MR. TOWNSEND: The police  
21 officer, his answers on the questionnaire are the very  
22 middle of the road, there might be a possibility that he  
23 could hold but I don't know.

24 THE COURT: See if you can  
25 cancel the last one and we'll let one of them come in and

1 see how it goes.

2 So we will just recess until 1:00  
3 o'clock and we will start up at 1:00.

4  
5 (Noon recess.)

6  
7 (Afternoon session.)

8  
9 THE COURT: Bring in Mr.  
10 Pearson.

11 THE BAILIFF: Yes, sir.  
12 Watch your step and just have a seat up  
13 there in the chair, please.

14  
15 BOBBY KEITH PEARSON, Potential Juror #8,  
16 was called as a Potential Juror and, having been  
17 previously sworn by the Court, testified as follows:

18  
19 THE COURT: Good afternoon,  
20 sir.

21 THE POTENTIAL JUROR: Hello.

22 THE COURT: Go ahead and take  
23 your seat.

24 And you are Bobby Pearson?

25 THE POTENTIAL JUROR: Yes.



1 THE COURT: Mr. Pearson, I am  
2 Gary Stephens, I'm presiding over this trial.

3 First I appreciate your patience with  
4 us, we have been rescheduling you and keeping you on hold  
5 more or less and we never know how long we are going to  
6 talk to a juror. Sometimes we may talk to a juror for  
7 an hour, sometimes two hours so we try to schedule people  
8 to be the least inconvenienced as possible but it just  
9 doesn't always work. So thanks for your patience with  
10 us.

11 Sir, we have got two lawyers  
12 representing the State of Texas, we have the District  
13 Attorney from Morris County, Mr. Richard Townsend.

14 THE POTENTIAL JUROR: Yes.

15 THE COURT: We have the  
16 District Attorney from Cass County, Mr. Randall Lee.

17 There are two Defense Attorneys, Mr.  
18 Bird Old, Mr. Lance Hinson.

19 Next to Mr. Hinson is the Defendant, Mr.  
20 Billy Wardlow.

21 Now, Mr. Pearson, the lawyers have read  
22 your questionnaire and they are familiar with your  
23 answers, they are going to talk to you about some of your  
24 answers and they are going to talk to you about the  
25 principles of law involved in a death penalty case and

1       you are going to be asked a lot of questions that will  
2       let us know whether or not to put you on the jury.

3               In order to be qualified you must be  
4       able to understand and follow the law.    You don't  
5       necessarily have to agree with the law, it's kind of like  
6       filing income tax, you may not want to, you may not agree  
7       with it but as long as you do it you are complying with  
8       the law.

9               If there's some aspect of our law that  
10       you don't agree with but you can still follow the law you  
11       are qualified but if there is some part of our law that  
12       you just disagree with so much that you can't follow it  
13       then you are not qualified.

14              So we need to know what you think about  
15       the laws that will be involved in this type of case and  
16       the only way we can find out what you think is to ask.

17              We have also found that being qualified  
18       doesn't necessarily mean that you would be an appropriate  
19       juror for a death penalty, often there's something in a  
20       person's view or background that doesn't disqualify them  
21       yet it lets us know that he, maybe he or she would just  
22       be better off as a juror in another case.

23              So we are going to talk to you now about  
24       the law and the lawyers will want to know something about  
25       how you think and how you get to your opinions and

1 conclusions. The only way we know how to do this is by  
2 asking questions and there's no right or wrong answers,  
3 they are just questions and there's no right or wrong  
4 opinions, whether we agree or disagree with you is  
5 totally immaterial, it's your opinions that we need to  
6 find out about.

7 So I hope that you will just open up and  
8 be honest with us and don't worry about the answers, like  
9 I said, it's immaterial, they will let us know whether  
10 or not to put you on the jury but we do expect you to be  
11 honest and open with us and we'll try to make this as  
12 short as possible.

13 Do you have any questions before we  
14 start?

15 THE POTENTIAL JUROR: No.

16 THE COURT: Mr. Lee.

17  
18 VOIR DIRE EXAMINATION

19 BY MR. LEE

20  
21 Q Mr. Pearson, I am as the Judge mentioned, Randy  
22 Lee, I'm from Cass County, it's a little bit far from  
23 here to know much about you but as the Judge said, we are  
24 not trying to pry, we just want people that can listen  
25 to all the evidence and follow the law, decide fairly.

1                   This is a death penalty case so it's not  
2                   like any other jury that you may have served on in that  
3                   we don't ask the jurors as a group a bunch of questions  
4                   and then decide, we ask them individually. That's why  
5                   you are in here individually and it's to give us a chance  
6                   to get to know you a little bit better. This is our only  
7                   time to ask you questions, after today you give us a  
8                   response, we can't ask you anything, you will give it  
9                   through your verdict and through listening if you are on  
10                  the jury.

11                  And there's no right or wrong answer as  
12                  the Judge mentioned.

13                  Frankly if I was to be asked to be on  
14                  the jury and some of my relatives were on trial some of  
15                  them I would believe them no matter what, I don't care  
16                  what the evidence is, I'm going to believe them and other  
17                  relatives, some of my other relatives I wouldn't believe  
18                  anything they say so it wouldn't be real good for me to  
19                  serve on some of those juries.

20                  We have got your questionnaire and I  
21                  believe you stated that you believe in the death penalty  
22                  and you believe it ought to be used on serious cases, is  
23                  that correct?

24                  A           That is correct.

25                  Q           And that is that you are -- that has been your

1 belief all of your life or has that been changed?

2 A I guess I have always felt that way.

3 Q We are going to give you some examples and ask  
4 you various questions.

5 For instance; the questionnaire talked  
6 about murder but really on a death penalty it has to be  
7 capital murder and in order for you to understand the  
8 difference I'm going to have to explain a little bit; in  
9 Texas murder, that's the intentionally and knowingly  
10 killing someone is murder. If I walk up to you or to  
11 someone and just shoot them that's murder.

12 In order to be capital murder it has to  
13 be murder plus something else and the law specifically  
14 decides, says what that can be, for instance, if I walk  
15 up and kill someone for money, if someone hires me to  
16 kill them that can be capital murder or if I kill more  
17 than one person or I am robbing a bank and kill somebody  
18 or committing any kind of robbery, any kind of rape,  
19 burglary, etcetera, it's murder plus something else.

20 Can you kind of understand the  
21 distinction there?

22 It's not just an ordinary murder.

23 A Yes.

24 Q Could you personally vote for the death penalty  
25 in the right kind of case if you were on the jury and you

1 were the last juror to vote, all the 11 people voted  
2 ahead of you and as a result of your vote it would result  
3 in a death penalty verdict and you believe that it was  
4 justified, could you be that last person to vote to where  
5 your vote was the one causing someone else's death?

6 A I have never been in that situation. It  
7 wouldn't be easy but I feel like I can.

8 Q It's hard to think about it, most people don't  
9 think about that until the time comes and that's why we  
10 are asking the questions.

11 We are seeking the death penalty in this  
12 case.

13 A I understand.

14 Q It's a bad case in our mind and that's what we  
15 are going to ask for so that's why we want to know, can  
16 you do it and if you can do it can you follow the law?

17 Texas has a two-part trial, that is we  
18 have a guilty/innocence portion of the trial where all  
19 the evidence we introduce is evidence as to guilt, did  
20 a defendant do what they are charged with?

21 We don't -- we don't introduce evidence  
22 as to punishment at that time, we are just trying to  
23 prove that he did what he was charged with and then at  
24 the conclusion of that the jury goes out and decides is  
25 he guilty and if so what of.

1                   Then we have a punishment section to  
2 where we offer evidence as to, okay, now, you found him  
3 guilty, what are you going to do with him?

4                   And we offer -- the other side offers  
5 evidence in both parts of the case as to what should be  
6 done now that he's guilty of whatever, what shall we do  
7 with him?

8                   Of course if you find him not guilty  
9 during the first part of the trial we don't go to the  
10 second part and it's all over.

11                  But under a capital case it's a little  
12 bit different, let me -- it's a little bit more -- in  
13 order to serve on a jury you have to be able to consider  
14 the Judge's instructions in order -- for instance, in a  
15 capital case he will give you some instructions, I  
16 believe you will have a copy of it up there, it will --  
17 if I can find it here -- called "Special Issues", it's  
18 a -- it has two parts entitled "Special Issue."

19                  If you have found a person guilty of  
20 capital murder the Judge will give you instructions, a  
21 lot of instructions but that is the basic one on Special  
22 Issue #1.

23                  Could you read that, please, kind of  
24 slow and then I will ask questions on it.

25                  That is talking about probability that

1 the defendant will commit future acts of violence.

2 What the law requires that even though  
3 you found a person guilty of capital murder that you have  
4 to withhold what you are going to decide to do with him  
5 until all the evidence comes in and when all the evidence  
6 -- at the conclusion, you can't make up your mind  
7 beforehand, you have got to wait and hear our side, you  
8 have got to hear the Defense side and you have got to be  
9 able to consider, that is think about all the evidence  
10 that is introduced before you make up your mind.

11 And on that we are talking -- we are not  
12 talking about will a defendant commit necessarily a  
13 future murder but it's a future act of violence.

14 That can be as little as punching  
15 someone in the nose or it could be rape, you know,  
16 various other -- you know, various other offenses. And  
17 we are required to prove that beyond a reasonable doubt,  
18 reasonable doubt that he will probably -- there is a  
19 probability he will commit future acts of violence.

20 If you found someone guilty could you  
21 withhold judgment as to what should be done or withhold  
22 judgment as that Special Issue and not immediately say  
23 just because he did it he's going to do it again and wait  
24 and listen to all the evidence, wait and go to that  
25 Special Issue?



1 A I feel like I can.

2 Q And at the punishment stage we are just going  
3 to offer evidence as to what should be done with him, is  
4 he, you know, we may bring in reputation witnesses, we  
5 may bring in other bad acts or threats or other crimes  
6 that he may have done. I'm not saying we will but we may  
7 bring in that and also the Defense will bring in probably  
8 evidence, things along in mitigation but you could  
9 restrict your decision until the proper order? The law  
10 requires that you can't jump from one point finding him  
11 guilty to finding -- to wanting the death penalty, that  
12 you have to do it in order to make your decision based  
13 on the evidence as it comes in.

14 Do you think that you could do that,  
15 follow the instructions?

16 A Yes.

17 Q Special Issue #2, just below that, could you  
18 read that?

19 A Okay.

20 Q That's a lot more complicated, to me it is  
21 anyway.

22 That's basically talking about  
23 mitigating evidence or evidence that might make him less  
24 blameworthy, do you understand basically what that is  
25 saying?

1 A I think so.

2 Q It's in legalese to some extent and -- but  
3 mitigating evidence is evidence that might reduce the  
4 moral blameworthiness, his responsibility, his -- it's  
5 not an excuse for committing the crime but that because  
6 of other factors that it might not be quite as -- he  
7 might not be quite as blameworthy as someone else who  
8 committed the same type of crime.

9 For example, many people believe that  
10 age is a mitigating circumstance, it's not necessarily,  
11 no one can tell you that age necessarily is mitigating  
12 but for instance an 80 year old man -- I'll give you a  
13 different example, a retarded person, a person severely  
14 retarded, understands, can function but can't quite think  
15 as clear as the average person, someone might consider  
16 that he's not quite as responsible for his action as an  
17 average individual that commits a crime.

18 Sometimes people feel like background  
19 may be or an alcoholic that is intoxicated, some people  
20 may look at that bit of evidence and say, "Well, he was  
21 intoxicated, he wouldn't have done it he hadn't been  
22 drunk so maybe he's not responsible."

23 But someone else may look at that same  
24 evidence and say, "If he hadn't been drinking he wouldn't  
25 have done it and that's really more of a blame."

1 And no one can tell you what mitigating  
2 circumstance is but it's something that might lower a  
3 person's responsibility.

4 What the law requires that you be able  
5 to in a case of you -- of you finding him guilty of a  
6 capital murder and you come back, you consider all the  
7 evidence and you go to Special Issue #1 and if you listen  
8 to the evidence and you decide a person, well, he's not  
9 likely, it's not probable that he's going to commit  
10 future acts of violence, at that point that's it, you  
11 don't have to go any further on a case of that nature,  
12 he automatically gets a life sentence. He doesn't get  
13 the death penalty.

14 But if you decide, yes, he's going to  
15 be a danger to society you can't stop there, you can't  
16 say he's going to get the death penalty just because he's  
17 going to be dangerous, you have to then look at his  
18 situation or mitigating circumstances and then if you can  
19 answer "No" to Special Issue #2 that there is no  
20 mitigating circumstance that is so big to lower his  
21 responsibility then he gets the death penalty.

22 But if there is then he gets life.

23 So he gets a lot of chances to get life  
24 but it only has to be answered a certain way to get  
25 death.

1 Do you kind of understand what I'm  
2 talking about?

3 A I do.

4 Q I know that's somewhat complicated whenever  
5 lawyers get involved it's going to make everything  
6 complicated but there's motive behind it and reason and  
7 it's protection for society.

8 Could you consider all the evidence and  
9 follow the Judge's instructions if he instructs you this  
10 is the law and could do that and follow it if you are  
11 selected on a jury?

12 A Yes.

13 Q And do what you think the evidence calls for?

14 A Yes.

15 Q There may be a possibility, I mentioned earlier  
16 that capital murder is murder plus something else and in  
17 this particular case it's murder plus a robbery, that in  
18 the act of committing a robbery a murder has taken place,  
19 you know, it might be that you decide our evidence is  
20 weak on the robbery, can't prove that they committed a  
21 robbery but if we prove that he committed murder in that  
22 case you would be given the opportunity in the  
23 guilt/innocence portion to find him guilty of murder,  
24 intentionally, knowingly cause -- causing an individual's  
25 death.

1 And if you do that then it's a different  
2 range of punishment.

3 The law requires you to be able to  
4 consider the full range of punishment. In -- for a  
5 murder case the range of punishment is anywhere from five  
6 years probation to life in the penitentiary.

7 Do you think you could consider a full  
8 range of punishment?

9 For instance, let me give you an  
10 example, most people immediately think I couldn't  
11 consider probation for murder, that sounds too horrible.  
12 But the common example used among lawyers, I have an 80  
13 year old couple, have been married since they were 16,  
14 17 years old, have had grandkids and the wife has cancer  
15 or some other disease and is dying, she is on life  
16 support, she is in pain, she is going to die within a few  
17 weeks but she is in terrible pain. Begs her husband,  
18 "Please unplug me, please kill me", you know, "I can't  
19 take it anymore."

20 And her husband does. He goes over and  
21 unplugs the machine.

22 Then that's murder under Texas law.

23 However that might not be the same type  
24 of murder that is planned out ahead of time in killing  
25 so you might want to consider probation on that type of

1 case.

2 And there is also more horrible torture  
3 type murders, do you think that under the right situation  
4 that you could consider the full range of punishment on  
5 a murder case?

6 A Yes.

7 Q Do you think you could consider probating  
8 someone on murder on the fact situation, not that you  
9 would do it but that you could consider a probation?

10 A Under the example that you give I would say  
11 that would be a possibility.

12 Q And it's not that you have to do it but you  
13 have to at least be able to think about it on any of the  
14 full range. And you don't know the facts and anything  
15 that we say, anything that we tell you today is not fact,  
16 it's not evidence, it's basically we are giving you  
17 examples to get to -- to get input from you to see how  
18 you feel, what you are thinking about.

19 So anything either one of us says,  
20 either side, is not evidence and is not meant to be  
21 evidence on our part.

22 The law also requires that you be able  
23 to consider the evidence, give the witnesses an equal  
24 footing. Some people automatically believe a preacher,  
25 for example, just because he's a preacher he gets up

1       there and testifies you are going to automatically  
2       believe him, you are going to give him a head start over  
3       someone else.

4               The law requires that you give them an  
5       equal footing. Or policeman, some people were trained  
6       from little bitty kids, were trained, "If you are in  
7       trouble go to a policeman, he helps you."

8               We hold a high esteem for what police  
9       are supposed to do but the law requires that you be able  
10      to consider them equal, you can consider all evidence,  
11      you can consider their background and all to make a  
12      decision whether they are telling the truth but you can't  
13      give them a head start. You can't automatically give  
14      someone or somebody -- do you think that you could give  
15      each witness a head start -- I mean "equal starting",  
16      I'm sorry, and not give advantage to one or the other on  
17      the witnesses?

18      A           I think I could.

19      Q           Some people have, for instance on  
20      psychiatrists, a lot of people -- or chiropractors -- a  
21      lot of people just think those type of occupations, they  
22      have problems with them.

23               If a psychiatrist is an eyewitness on  
24      something would you have any problem listening to a  
25      psychiatrist's testimony as to fact evidence as to what

1 he saw without giving him a disadvantage because you  
2 don't like psychiatrists, if you don't?

3 A I don't see any problem with that.

4 Q Their occupation wouldn't make any difference  
5 to you as to how you decide the evidence?

6 A I can't picture it being a problem.

7 Q Also in this case sometimes people feel like,  
8 and you may have thought about it when you came in and  
9 that will be a question, "What did he do" when you see  
10 the Defendant, "What is he guilty of, what did he do,  
11 he's indicted because he must have done something."

12 Did you kind of have that attitude or  
13 would you wait until you hear the evidence and decide  
14 based on the evidence?

15 A I feel like I would wait on the evidence, you  
16 know. I mean I can't help from, you know, naturally --

17 Q "Curious?"

18 A Yeah. Whatever.

19 Q Obviously in order to get in Court a person on  
20 a felony charge has to be indicted, that is a Grand Jury  
21 listens to the evidence and decided there is enough to  
22 go to Court.

23 Under Texas law or under the law  
24 anywhere in the free world that you are not allowed to  
25 consider the fact that a person is indicted. That is



1 just merely a piece of paper stating out the charges and  
2 telling them what they are charged -- what the charges  
3 are.

4 Could you put aside the fact that he is  
5 indicted and not consider the indictment as evidence and  
6 wait until you hear the evidence and hear it in the  
7 courtroom?

8 A I believe so.

9 Q The law also requires that -- in many cases a  
10 confession or a statement is given by a defendant and  
11 they require -- require various things in order for it  
12 to be admissable, in order for you to be able to consider  
13 it.

14 For instance, obviously since we have  
15 had a country the law enforcement, police officers can't  
16 go in and beat a man until he confesses. That wouldn't  
17 be voluntary. If they just beat him until he signs the  
18 paper. The law requires that you be able to put aside  
19 evidence that is illegally -- may have been illegally  
20 taken, if you find that it is.

21 Everyone has heard of the "Miranda  
22 Warnings", that if an officer takes a statement from an  
23 individual that he has to give him the Miranda Warnings,  
24 if he takes a confession and there are various other  
25 technicalities.

1                   If you heard evidence as to a confession  
2 but you feel like it was illegally taken, that the  
3 officer beat it out of him or for some other reason, if  
4 it's illegal but you believe the confession is true, can  
5 you push that aside, you can't forget that you heard the  
6 evidence, you can't just ignore it but can you not  
7 consider that evidence of a confession that is illegally  
8 taken and put it -- and put it aside and base your  
9 decision on the evidence, the other evidence that is  
10 introduced?

11           A           I -- I feel like I can but that is, you know,  
12 never been put in that spot. I don't know.

13           Q           Most people don't even think about that sort  
14 of thing, that's why we are here giving you bizarre fact  
15 situations.

16                   For instance, if a confession is beaten  
17 out of someone?

18           A           Well, you know, if that was the case I don't  
19 think I would have any trouble, you know, you know,  
20 making -- I mean putting this aside.

21           Q           If a confession is taken under State law if the  
22 officer goes in and the defendant wants to give a  
23 statement the State law requires that Miranda Rights be  
24 read and has various requirements. Under that  
25 circumstances if he violates those rights to some extent

1 can you put that aside if a statement was taken and you  
2 hear the evidence, hear the confession but you have heard  
3 all the other evidence can you push that aside if you  
4 feel like it's illegally taken?

5 A Now, what are the "Miranda Rights?"

6 Q The right to remain silent, the right to have  
7 an attorney, to have one appointed for you, if you are  
8 -- a few years ago that was --

9 A What you are saying --

10 Q -- if you watched "Dragnet" a few years ago  
11 that was a big --

12 A -- what you are saying, if I think he wasn't  
13 give his rights?

14 Q If he -- if it was illegally taken, assume  
15 that's a requirement that the rights be read, it's also  
16 a requirement for a confession but sometimes that  
17 requirement -- if the officer took it could you push that  
18 aside and not consider it as evidence if the Judge tells  
19 you that you have to do it?

20 A Yes.

21 Q There's other ways that a statement can come  
22 in, the defendant can get on the stand and he can testify  
23 but obviously that's voluntary and admissable and he can  
24 write letters to various people and those letters can be  
25 recovered, those -- the Judge will give you the

1 requirements but if you feel like the law was violated  
2 in getting those can you push that aside if you think  
3 it's illegally taken?

4 A Yes.

5 Q I notice on your questionnaire that you know  
6 a little bit about this case, where did you get your  
7 information?

8 A Just when I first come up here I didn't  
9 remember the case but, you know, people, you know,  
10 talking and I remember reading it in the paper or  
11 whatever.

12 Q You didn't get your information from anyone  
13 that told you that they knew what happened or anyone that  
14 said they really know?

15 You got it from various second hand  
16 information?

17 A Right. Just from newspapers -- I may have saw  
18 it on the news, you know. I remember the incident is  
19 what I'm trying to say.

20 Q In receiving that information have you made up  
21 your mind about the case or do you know enough about it  
22 that it would interfere with your ability to listen to  
23 the evidence and decide based on the evidence that comes  
24 into today or during this trial?

25 A I don't think that it would but, you know, it's

1 -- you know, I mean it's there, is a little bit of, you  
2 know, knowledge -- I mean I just --

3 Q I mean obviously we can't make you forget it,  
4 you know, it happened?

5 A I -- yeah. I don't have any problem with that.  
6 I don't see that I have any problem.

7 Q Anyone -- I assume from what you are talking  
8 to me saying anybody that has told you things were not  
9 in a position to really know the facts and not from a  
10 real reliable source? I'm assuming it was from just talk  
11 around on the streets?

12 A Like I say, I just remember seeing it on the  
13 news or whatever, you know, that the defendant was caught  
14 with the truck or whatever in another state.

15 Q Anything about hearing that on the news -- do  
16 you consider the news a reliable source of information,  
17 are they always correct?

18 A No. Definitely not.

19 Q And about that information that you received,  
20 would you -- could you push it aside and not consider it  
21 in this trial, just listen, you will have the evidence  
22 firsthand?

23 A I feel like I can because, you know, as far as  
24 I know that wasn't even the same person, you know.

25 I do remember, I do remember the case

1 or the incident.

2 Q I think it was fairly well reported, I assume  
3 in the local papers here?

4 A I don't even --

5 Q Are you from Cason or know anyone that lives  
6 in the Cason area?

7 A No. I don't.

8 Q Do you know Mr. Cole, the deceased person?

9 A I don't know him.

10 Q Or his family?

11 Do you know Mr. Wardlow?

12 A No.

13 Q You stated that you didn't know Mr. Old  
14 personally, how do you know him?

15 A I guess everybody in Titus County knows of him.

16 Q Just see him?

17 Is there anything about that knowledge  
18 that would interfere with your ability to decide fairly?

19 A No. I do not know him personally. I just know  
20 of him.

21 Q Do you know Mr. Hinson, Lance?

22 A I know Lance somewhat. He lives close to where  
23 I live.

24 I would say that, you know, we are not  
25 personal friends but we do know each other.

1 Q Would that interfere with your ability to  
2 decide fairly?

3 A No. It wouldn't.

4 Q If you had to vote in this case and you were  
5 on the jury and you find the death penalty could you see  
6 Lance the next day, would that give you any kind of  
7 problem?

8 A I don't feel like it would.

9 Q Does he keep his grass mowed and all that,  
10 something where you wouldn't hold it against him, we  
11 would all have a clear shot?

12 A He lives too far in the boonies.

13 Q No noisy parties or anything like that?

14 THE COURT: Twenty-five  
15 minutes.

16 MR. LEE: Basically the law  
17 requires that you be able to listen to the evidence that  
18 is actually presented here from the stand, listen to the  
19 various other evidence and scientific reports and  
20 witness, that sort of thing and not consider what is not  
21 in evidence.

22 And sometimes that gives people a  
23 problem, they want to guess, they want to know why didn't  
24 something happen, why didn't they tell us.

25 There's various reasons that something

1 may not come in. For one thing the rules may prevent us  
2 from talking it, another may be strategy.

3 For instance, a defendant has a right  
4 not to testify, not to give out any evidence, not to say  
5 a word.

6 Would that fact that we are accusing him  
7 of a horrible crime, we bring in a lot of evidence and  
8 for whatever reason he decides not to testify, maybe he's  
9 got a bad stuttering problem, it may be something silly  
10 but for some reason they don't testify.

11 Would you hold the fact that he didn't  
12 testify against him?

13 THE POTENTIAL JUROR: I don't  
14 think so. No.

15 Q (BY MR. LEE) And that wouldn't interfere, that  
16 wouldn't go into your thought processes as far as you  
17 wouldn't consider the fact that he didn't testify against  
18 him?

19 A I don't think so.

20 Q Some people have the idea that -- in fact I was  
21 taught that you stand up for yourself, you cover the  
22 ground you stand on and you don't, you know, if someone  
23 is saying something against you you stand up to it.

24 But the law requires you not -- to be  
25 able to not -- t be able to consider the facts. If you



1 find him guilty of capital murder, he didn't -- still  
2 doesn't testify in the punishment stage, sometimes the  
3 jurors just want to hear him say, "I'm sorry" or give  
4 some kind of explanation.

5 Can you still to the fact that he's got  
6 the right to not testify and not hold that against him?

7 A I don't see any problem.

8 Q It could be any number of reasons that we won't  
9 go into.

10 We are trying -- we have got two of us  
11 here, that's the reason we have attorneys to make sure  
12 we don't forget something.

13 If the fact, if we come -- if you are  
14 selected on this jury and you heard the evidence and you  
15 find him guilty of capital murder and you listen to the  
16 evidence on the guilt/innocence portion the Judge will  
17 probably give you an instruction as to the parole law in  
18 Texas that the basic definition is that you are not  
19 allowed to consider in that parole law when he's going  
20 to get out, that you are to consider -- you are to make  
21 your decision based on the evidence, not what someone  
22 else might do in the future.

23 I anticipate an instruction to the  
24 effect that the Defendant if given life in the  
25 penitentiary will be eligible, not that he will get out

1 but will be eligible for parole in 35 years, after he  
2 serves 35 years.

3 But the law requires you to be able to  
4 put that aside, that he may never get parole, he may stay  
5 in the penitentiary for the rest of his life, he may get  
6 out in 35 years.

7 Can you put that aside, whatever might  
8 happen in the future and not consider that in making your  
9 decision?

10 A I believe so.

11 Q If it says "life" I think the law requires you  
12 to presume that's going to be life and not adjust the  
13 penalty to what you think might happen.

14 Can you do that and do what you think  
15 is best and let the system worry about what happens?

16 THE COURT: I need verbal  
17 responses.

18 THE POTENTIAL JUROR: Yes.

19 THE COURT: Thank you.

20 MR. LEE: You were a little  
21 bit hesitant when we were talking about the punishment  
22 and confused and I know it's because of the charges that  
23 are complicated to some extent but I want to clarify and  
24 make sure on the point of mitigating circumstances.

25 Nobody can tell you what "mitigating

1 circumstances" is, that's up to you so basically if you  
2 feel there is enough evidence that there is mitigating  
3 or some reason that he's not quite as blameworthy as  
4 someone else, for instance, some people consider age, the  
5 fact that an individual might be young or old. And I  
6 can't tell you what that mitigating circumstance is but  
7 can you at least listen to whatever evidence is presented  
8 and make your determination as to what mitigating  
9 circumstance -- what is sufficient mitigating  
10 circumstances?

11 Would you automatically assume that some  
12 that's 18 or 19 that that is mitigating circumstances or  
13 could you consider and make your decision based on the  
14 whole circumstances?

15 THE POTENTIAL JUROR: What?

16 Q (BY MR. LEE) Would you automatically say  
17 "Eighteen years old is mitigating circumstances and  
18 shouldn't deserve the death penalty?"

19 A No. I wouldn't.

20 Q Now, could you consider the fact that a person  
21 is 18 years old and put it in the whole context of the  
22 evidence? Could you think about it and consider that age  
23 as important?

24 A I -- I can't say that, you know, that the age  
25 factor wouldn't stick in the back of my head.

1 Q Do you -- but I'm not sure I know what you are  
2 getting at.

3 Basically the law requires that you  
4 consider it or think about all the evidence that is  
5 introduced.

6 And nobody can tell you that an 18 year  
7 old is mitigating, no one can tell you it's not legally,  
8 can you listen to the evidence and decide and base your  
9 decision on the evidence as the picture of the whole  
10 case, the whole case in chief and not automatically  
11 decide something is not mitigating until you have heard  
12 the whole case?

13 A Yes.

14 Q And I was a little confused about your age --  
15 your statement on the age; when it's in the back of your  
16 mind would it be in the back of your mind as kind of  
17 bothering you to give somebody, an 18 year old or 19 year  
18 old or 20 year old the death penalty?

19 A I think that, you know -- you know, I have  
20 never thought about anything like this until I got called  
21 for this jury and, you know, quite honestly I have done  
22 quite a bit of thinking about the death penalty due to  
23 the fact that the defendant is 18 or 19 years old.

24 My conclusion in my mind was that, you  
25 know, if I were to choose to, you know, vote for the

1 death penalty that, you know, it wouldn't matter if it  
2 was -- who it was, you know, you know, if the  
3 circumstances were one way then it, you know, just  
4 whatever.

5 Q Are you saying that you could listen to all the  
6 evidence and make your decision not just on one single  
7 factor, is that what you are saying?

8 A Yes.

9 MR. LEE: Pass the witness.

10 THE COURT: Mr. Hinson.

11

12 VOIR DIRE EXAMINATION

13 BY MR. HINSON

14

15 Q Thank you, Your Honor.

16 Mr. Pearson, again I am Lance Hinson,  
17 we have met previously and Mr. Old and Mr. Wardlow, the  
18 Defendant in this case. (Indicating)

19 You were asked your knowledge of us, do  
20 you have any prior knowledge about the State's Attorneys  
21 in this case?

22 A None whatsoever.

23 Q Have you ever met anyone or discussed anything  
24 about Mr. Richard Townsend on the far end? (Indicating)

25 A No.

1 Q He's associated with the District -- he is the  
2 District Attorney associated with the law enforcement  
3 process in Morris County.

4 Do you have any friends or relatives or  
5 acquaintances connected with Morris County in law  
6 enforcement?

7 A No.

8 Q Mr. Randy Lee who has been asking you questions  
9 is associated with the District Attorney's Office in Cass  
10 County, is that correct, and has been elected Cass County  
11 District Attorney.

12 I believe your term starts --

13 MR. LEE: In January.

14 MR. HINSON: January of '95.

15 Have you previously met Mr. Lee in any  
16 capacity?

17 THE POTENTIAL JUROR: No.

18 Q (BY MR. HINSON) Ever used him for your  
19 attorney in any manner, not ever used him for your  
20 attorney?

21 A No.

22 Q Do you have any friends or acquaintances,  
23 relatives connected with Cass County law enforcement  
24 agencies?

25 A No.

1 Q You stated that you had some information  
2 regarding this case, could you tell me where you gained  
3 that information or do you recall?

4 A No.

5 You know, I guess just in talking to  
6 potential jurors we sit there talking and some people say  
7 they never heard of it and I, you know, I have -- I  
8 remember the incident but I don't -- I don't remember,  
9 you know, exactly how I heard about it. I feel like it  
10 was on the news or whatever, you know.

11 Q Do you have a police scanner at home or  
12 anything like that?

13 A No.

14 Q You stated you could disregard what you had  
15 heard, is that accurate?

16 A Yes.

17 Q You could disregard what you heard regarding  
18 this case and if you were selected as a juror you could  
19 come in and start with a level playing field, disregard  
20 what you had heard and you would consider only the  
21 evidence you heard presented to you as a juror, is that  
22 accurate?

23 A Yes.

24 Q Just to sort of round that out; would you  
25 require any evidence to overcome what you had heard?

1 A What?

2 Q Would you require controverting evidence?

3 A No.

4 Like I said, I have heard the story as  
5 far as I know, you know, I don't know the defendant so,  
6 you know, the story could have been about somebody  
7 completely different at the time. I don't know the  
8 details of the incident.

9 Q Regarding what you had heard; do you have any  
10 opinion as to the truth or veracity of those statements?

11 A Do I have an opinion?

12 Q Of whether what you heard or saw was the truth?

13 A No. I don't guess. Not really. No.

14 THE COURT: The questions  
15 don't get easier, do they?

16 MR. HINSON: I know we are  
17 sort of bouncing around.

18 What you had heard, did what you hear  
19 relate to Mr. Wardlow or to a case in general?

20 THE POTENTIAL JUROR: It  
21 related to the case in general.

22 Q (BY MR. HINSON) Without any names mentioned?

23 A I don't guess I ever heard his name until I  
24 came up here.

25 Q If evidence was presented to you -- and let's



1 just assume that the evidence supported what you had  
2 heard; would you require -- would require any evidence  
3 -- let me try to restate that.

4 Did you hear whether or not a defendant  
5 was arrested out of state?

6 A I did. Well, I do remember that there was  
7 something about, you know, it being in another state.  
8 I do remember hearing it that way.

9 Q And assuming that what you heard involved Mr.  
10 Wardlow being arrested out of state and involved in  
11 whatever offense you heard about, have you formed any  
12 opinion based on what you heard as to the guilt or  
13 innocence of that person?

14 A That's hard to answer.

15 MR. TOWNSEND: Your Honor, I  
16 want to object. I think he put facts in there that  
17 weren't there. I believe he stated he didn't know who  
18 the guy was.

19 THE COURT: Overruled.

20 Mr. Hinson, did you ask him if he had  
21 formed a conclusion about the person he heard or about  
22 Mr. Wardlow or --

23 MR. HINSON: Had he formed an  
24 opinion based on what he heard regarding that person's  
25 guilt or innocence?

1 THE COURT: I'm going to  
2 sustain the objection.

3 I will let you ask that question but I  
4 think it needs to relate to Wardlow.

5 MR. HINSON: Okay. Assuming  
6 that the person arrested out of state was Mr. Wardlow;  
7 have you formed an opinion whether or not Mr. Wardlow was  
8 guilty or innocent of that charge?

9 THE POTENTIAL JUROR: That's  
10 a hard question. I guess at the time I heard that I  
11 guess the assumption was that they -- that, you know,  
12 they had caught, you know, the person that was guilty.  
13 I mean at that time.

14 Like I said before, you know. I don't  
15 know how to say it but, you know, I don't know that that  
16 was -- I don't know who that person was so, you know, but  
17 I did see the news.

18 I guess that's basically what I was  
19 saying.

20 Q Taking your assumption one step further; would  
21 that influence your decision-making when you were  
22 deliberating on a verdict in this case?

23 A I don't think so. I think if I was one of the  
24 jurors I would listen to it step by step and assume that,  
25 you know, from the beginning that he was not guilty.

1 Q You are saying you would start with the  
2 proposition that he was innocent until proven guilty?

3 A Yes.

4 Q Would you require any evidence -- and I may  
5 have asked this and I don't recall -- would you require  
6 any evidence to overcome your assumption or what you  
7 heard?

8 A No.

9 Q You would start with a level playing field?

10 A I think so.

11 Q On both sides?

12 A I think so.

13 Q "You think so, yes or no?"

14 A Yes, sir. I could.

15 THE COURT: When we say "We  
16 think so" when we mean yes and "I don't think so" when  
17 we mean no so we do need to use "Yes" and "No" if we can,  
18 sir.

19 MR. HINSON: I believe you  
20 stated -- or let me just ask you if you start with the  
21 proposition that a person is innocent until proven guilty  
22 beyond a reasonable doubt if you were selected as a  
23 juror, would you start with that?

24 THE POTENTIAL JUROR: Yes.

25 "I think so."

1 No. I was just kidding.

2 Q (BY MR. HINSON) The State has to prove to you  
3 the defendant's guilt beyond a reasonable doubt, do you  
4 understand the law?

5 A Yes.

6 Q So it is your understanding that every person  
7 is innocent until proven guilty beyond a reasonable  
8 doubt?

9 A Yes.

10 Q Now, I will just ask you if you will look  
11 through those papers up there and find the indictment.

12 THE COURT: Right in front of  
13 you. (Indicating)

14 MR. HINSON: "Number 3" I  
15 believe.

16 You were asked a little bit about that  
17 indictment, let me ask you a little bit about that  
18 indictment.

19 THE POTENTIAL JUROR: Okay.

20 Q (BY MR. HINSON) Does the indictment support  
21 anything that you have heard previously regarding this  
22 case?

23 A I mean that's basically what I remember seeing  
24 on the news or whatever. Yes.

25 Q And do you understand that the indictment

1       itself is not evidence of any criminal act, that you  
2       would be -- that you would be asked to disregard the  
3       indictment as evidence of any criminal act, is that your  
4       understanding of the law?

5       A           Yes.

6       Q           And could you disregard the indictment --

7       A           Yes.

8       Q           -- as evidence?

9       A           Yes.

10      Q           You could listen to what was presented to you  
11      if you were selected as a juror, listen to what was  
12      presented to you and the evidence, the testimony and  
13      documents, consider that as the evidence as to guilt and  
14      innocence and as to punishment disregarding what is  
15      contained in the indictment?

16      A           Yes.

17      Q           The decedent, Mr. Cole, I believe you stated  
18      you had no prior knowledge or contact with Mr. Cole, have  
19      you ever met Mr. Cole?

20      A           Not that I know of.

21      Q           Has anyone discussed with you since -- well,  
22      at anytime, facts regarding Mr. Cole?

23      A           Are you talking about this incident?

24      Q           No. Just the decedent's life in general, have  
25      you discussed any of those events with anyone?

1                   You have no personal knowledge of him?

2                   Has anyone told you anything about him?

3           A           The -- I know a person that used to know his  
4           grandson or something like that but, you know, I think  
5           basically I think that -- I don't guess I know.

6           Q           Would your knowledge of someone related to Mr.  
7           Cole effect your ability to listen to the evidence and  
8           honestly make a fair and impartial decision regarding the  
9           guilt or innocence of Mr. Wardlow?

10          A           No.

11          Q           Going back to the indictment, I think my  
12          question was -- my question which I have not asked, I  
13          think I was trying to get to it; do you believe because  
14          someone is charged in an indictment that they are guilty  
15          of any crime?

16          A           No.

17          Q           Have you ever sat on a Grand Jury?

18          A           No. I have never sat on one.

19                   That's why I am hesitant to answer some  
20          of the questions because I have never been in the spot.

21          Q           If you have any questions address either  
22          myself, Mr. Lee or the Court.

23          A           All right.

24                   THE COURT: We can ask you  
25          questions and you certainly can ask us questions so if

1           there's anything you don't understand we'll clarify it.

2                           MR. HINSON: Up in front of  
3           you there is another document, "State's Witnesses."  
4           (Indicating)

5                           THE COURT: No. Right there.  
6           (Indicating)

7                           MR. HINSON: Exhibit Number  
8           1, it's a three-page document.

9                           Do you have three pages attached to that  
10          document?

11                          THE POTENTIAL JUROR: Yes.

12          Q           (BY MR. HINSON) Would you read those names and  
13           if you run across a name that you have heard before would  
14           you please stop and tell me who that name is?

15          A           This "Harry Washington", the guy that ran for  
16           Sheriff here?

17          Q           I believe he is.

18          A           I don't know him but I have heard of him.

19          Q           Is that all the information that you have heard  
20           about Mr. Washington?

21          A           I remember him running for Sheriff. I wouldn't  
22           know him if I saw him.

23                          That's the only one I recognize.

24          Q           Now, you will notice on Page 3 I am sure as you  
25           went through that there were some out of state people

1 listed there.

2 A Okay. yes.

3 Q Do you see that?

4 A Yes.

5 Q That may or may not support what you previously  
6 heard about this case but seeing those persons named from  
7 out of state there have you formed any conclusion as to  
8 the guilt or innocence of Mr. Wardlow?

9 A No.

10 Q Does the information contained on the Witness  
11 List support the allegations that you had heard  
12 previously regarding this case, support them in any way?

13 A No.

14 As a matter of fact the -- the out of  
15 state people, I mean that's not even what I remember, you  
16 know.

17 Q So based on this information that you have now  
18 learned you can still, if you are selected as a juror,  
19 come in with a level playing field for both sides without  
20 relating back to any prior information that you may have  
21 learned, you could disregard the prior information?

22 A Yes. I could.

23 Q Mr. Lee discussed with you the capital murder  
24 and the lesser included offense of murder, do you recall  
25 discussing that?



1 A Yes.

2 Q Do you understand if Mr. Wardlow was not found  
3 guilty by the jury of capital murder the jury could  
4 deliberate on whether or not Mr. Wardlow was guilty of  
5 murder, that would be a lesser included offense?

6 Do you understand that legal effect?

7 A If he was not found guilty of capital murder?

8 Q As charged in the indictment.

9 A And the jury could deliberate on whether he was  
10 guilty of murder?

11 Q Yes.

12 A I don't guess I realized that.

13 Q Do you understand now the punishment for  
14 capital murder is either a life sentence or death  
15 sentence?

16 A Yes.

17 Q Okay. Now, the punishment for murder is five  
18 to 99 years or life in prison.

19 Without looking at the facts of any  
20 particular case if a person was not found guilty of  
21 capital murder could you consider, when considering if  
22 a person is guilty of murder could you consider a term  
23 of five years as punishment for murder?

24 A Yes.

25 Q In the proper circumstances?

1 A Yes.

2 Q If you were part of the jury panel that  
3 assessed 10 years or less as punishment for a defendant  
4 found guilty of murder you could also assess probation,  
5 which in effect means that the less amount of punishment  
6 would be five years probated.

7 In the proper circumstances could you  
8 consider for murder, for a person convicted of murder,  
9 could you consider a sentence of five years probation?

10 A It would depend on the circumstances.

11 Q You could consider that punishment?

12 A If you went to talking about some of his  
13 examples awhile ago, yes.

14 Q Mr. Lee gave you an example that you would  
15 accept or you could consider five years probation?

16 A Yes, sir.

17 Q In understanding probation there would be no  
18 actual jail time, that they would be required to see a  
19 State representative --

20 MR. LEE: Might be a good  
21 idea.

22 MR. HINSON: That would cut  
23 out probation.

24 They would be required to see a person  
25 employed by the State as their probation officer,

1 probably once a month or something along those lines, no  
2 jail time.

3 You could consider that in the proper  
4 set of circumstances?

5 THE POTENTIAL JUROR: Yes.

6 Q (BY MR. HINSON) Mr. Lee informed you that a  
7 life sentence in a capital murder case entailed the  
8 defendant to be considered for parole after 35 calendar  
9 years that he has been in jail.

10 Now, understanding that if a defendant  
11 was found guilty of capital murder could you still  
12 consider a life sentence and the death penalty  
13 alternatively?

14 A Yes.

15 Q Excuse me?

16 A Yes.

17 Q "Yes?"

18 A "Yes."

19 Q You were asked a little bit about the Fifth  
20 Amendment; the Fifth Amendment guarantees a criminal  
21 defendant the right to remain silent, the right not to  
22 have to testify in a criminal case.

23 Do you understand the implications of  
24 the Fifth Amendment?

25 A Yes.

1 Q If Mr. Wardlow in this case chose not to  
2 testify -- well, let me back up; a capital murder case  
3 will break down into three parts, the first part being  
4 jury selection, as you are well aware, the second part  
5 would be the guilt or innocence, whether or not this  
6 defendant is guilty or innocent, the third -- and you  
7 would answer that question before going to the third  
8 part, which would be the punishment phase.

9 And there is a little outline that you  
10 have up there if you would find it, it's a little flow  
11 chart, it's "Phase I, Guilt/Innocence", we could start  
12 Phase I being jury selection if you will, but we will go  
13 to Phase I as guilt or innocence.

14 Evidence is presented and then whether  
15 or not the defendant is found guilty, and you will note  
16 Phase II is the punishment phase, if the defendant is  
17 found guilty then you go to the punishment phase where  
18 other evidence would be presented to you.

19 Do you follow me on that? (Indicating)

20 A Yes, sir.

21 Q Now, in the Phase I, guilt or innocence, if Mr.  
22 Wardlow chose not to testify could you still consider  
23 life in prison and also consider the death penalty?

24 A Yes.

25 Q Would you require evidence from Mr. Wardlow

1 from him testifying for you to consider the life  
2 imprisonment?

3 A No.

4 Q What is your response? "No?" I believe it was  
5 "No?"

6 A "No."

7 Q Again, in Phase II in the punishment phase  
8 again Mr. Wardlow has no legal obligation to testify.

9 After evidence was presented to you in  
10 Phase I, assuming that the defendant was found guilty of  
11 capital murder, could you set that evidence aside before  
12 finding the defendant or before deciding that the death  
13 penalty would be a proper punishment?

14 A Yes.

15 Q If someone -- well, in your opinion if someone  
16 was found guilty of capital murder would you  
17 automatically impose the death penalty in that case?

18 A I want to say "I don't think so."

19 No. I -- no. I wouldn't.

20 Q Based on the circumstances that were involved  
21 you could still consider a life sentence or the death  
22 penalty?

23 A Yes.

24 Q Is that what you are saying?

25 A Yes. Looking at this, seeing how it works,

1       yes, I could. I could.

2                       I am new at this, I didn't even know  
3       that you went to Phase II and all that kind of stuff.

4       Q            I believe you answered that you had never been  
5       a juror in a criminal case?

6       A            That's true.

7       Q            Do you know anyone that has ever been a juror  
8       in a criminal case, related to anyone, acquaintance?

9       A            No. Not that I remember.

10      Q            Now, there is a document up there marked  
11      "Number 5" called "Special Issues", would you find that  
12      document? (Indicating)

13      A            Okay. Is this the same one that I had awhile  
14      ago?

15                       Yes. Now, mine says "3."

16                       THE BAILIFF: It has "5" at  
17      the bottom.

18                       MR. HINSON: "3" at the top.

19                       THE POTENTIAL JUROR: Oh,  
20      okay.

21      Q            (BY MR. HINSON) Have you read those two  
22      issues, correct?

23      A            Yes.

24      Q            Going to Special Issue #2 there at the bottom  
25      it states "Mitigating evidence is evidence that a juror

1 might regard as reducing the defendant's moral  
2 blameworthiness."

3 Mitigating evidence -- and would you go  
4 over Special Issue #2 and read it to yourself?

5 A What does "culpability" mean?

6 THE COURT: "Culpability"  
7 basically means "extent of blame, blameworthiness, guilt,  
8 culpability, how knowledgeable, how" -- just basically  
9 means "guilt and his knowledge of guilt, of his knowledge  
10 of what he was doing, accountability."

11 THE POTENTIAL JUROR: Okay.

12 MR. HINSON: Assuming that the  
13 defendant was found guilty in the guilt/innocence, Phase  
14 I of the trial, and you came to decide II, the punishment  
15 phase, if the defendant did not testify and there was no  
16 mitigating evidence in your mind could you still consider  
17 imposing a life sentence?

18 THE POTENTIAL JUROR: Let me  
19 clear this in my mind, ask that question again. I'm  
20 sorry.

21 Q (BY MR. HINSON) I'll try.

22 After you have gone through Phase I of  
23 guilt and innocence where the defendant is found guilty  
24 of capital murder and you go to Phase II, the punishment  
25 phase where you consider the evidence presented to you

1 in the punishment phase for that phase of the trial,  
2 disregarding evidence from the guilt or innocence phase,  
3 it's like two trials in one so we come to the second  
4 phase, the punishment.

5 The defendant again has a Fifth  
6 Amendment right not to testify and the defendant does not  
7 testify and no one testifies on his behalf and in your  
8 mind there is no mitigating evidence that has been  
9 offered; could you still have a life sentence for a  
10 defendant convicted of capital murder?

11 MR. LEE: I believe that  
12 question might be misleading as to what is --

13 THE COURT: Did you understand  
14 the question?

15 THE POTENTIAL JUROR: I think  
16 I do. I think what he's saying is if Mr. Wardlow was  
17 -- I mean he was proven guilty of capital murder and he  
18 didn't say anything in regard to his defense could I  
19 consider the life sentence instead of the death penalty?

20 THE COURT: And your answer?

21 THE POTENTIAL JUROR: Is that  
22 what you are asking?

23 MR. HINSON: I believe that's  
24 right.

25 THE POTENTIAL JUROR: I guess



1 I could consider it but, you know --

2 Q (BY MR. HINSON) Would you tend to lean toward  
3 the death penalty or life sentence in that situation?

4 MR. TOWNSEND: Object, Your  
5 Honor. I don't think he's required to tell them which  
6 way he would lean in certain situations.

7 THE COURT: Sustained.

8 MR. LEE: We would further say  
9 that if there's no mitigating evidence entered the answer  
10 to the question of Special Issue #1 is obvious and the  
11 jury does not put in --

12 MR. HINSON: Regarding the  
13 answer that you gave that you could consider it, would  
14 the fact that the defendant did not testify, would that  
15 effect your decision?

16 THE POTENTIAL JUROR: No. I  
17 don't believe that it would. I mean --

18 Q (BY MR. HINSON) Would it make it less likely  
19 that you would go with a life sentence for the defendant  
20 based on that?

21 A I object to him trying to pin him down, he  
22 didn't say in what situation he would do what. I don't  
23 think he's required to do that.

24 Q I agree.

25 I think you are trying to commit the

1 juror to a specific set of circumstances and I'm going  
2 to sustain the objection.

3 MR. OLD: Your Honor, if I  
4 understand Mr. Hinson's question what he's asking is the  
5 fact that if the man did not testify would it in fact  
6 influence or would he consider that as evidence in  
7 arriving at an answer?

8 THE COURT: I will allow that  
9 question, it was the way it was phrased to me appears to  
10 be committing the juror as to one position or another.

11 MR. OLD: I don't think it was  
12 intended that way.

13 THE COURT: I don't think it  
14 was intended but I just want the juror to understand  
15 exactly what is being asked.

16 MR. HINSON: Would the fact  
17 that the defendant did not testify, assuming that he did  
18 not testify in any phase of the trial, would that effect  
19 your decision-making process in the punishment phase?

20 THE POTENTIAL JUROR: No.

21 THE COURT: Thirty-five  
22 minutes.

23 MR. HINSON: When we talk  
24 about "mitigating circumstances" we read the bottom there  
25 on the Special Issues about reducing a defendant's moral

1       blameworthiness, it's not that mitigating circumstances  
2       would excuse any defendant's conduct but that this  
3       mitigating circumstance might make you believe that  
4       because of a defendant's age, family history or  
5       background or other factors a life sentence is more  
6       appropriate than death.

7                       Relating back to mitigating  
8       circumstances in answering your Special Issue #2 there  
9       that we are looking at regarding mitigating circumstances  
10      would you take into account or consider the defendant's  
11      age?

12                      MR. TOWNSEND: Object, Your  
13      Honor, calling for him to again tell what he would  
14      consider mitigating and what he wouldn't consider  
15      mitigating.

16                      THE COURT: I think at this  
17      point he's just asking him if these would be factors that  
18      he would consider or exclude in his thought process or  
19      decision process.

20                      Do you understand the question?

21                      THE POTENTIAL JUROR: I think  
22      I have kind of already been asked that question.

23                      THE COURT: It's a little bit  
24      different.

25                      What he's asking you is if there's any

1 particular factors that he mentioned that you would just  
2 summarily exclude and not consider at all.

3 In other words, do you have a  
4 predisposition to say that "I don't care what an age is,  
5 I will never think about it" or "I don't care about  
6 somebody's background, I wouldn't give it any thought or  
7 consideration at all, I don't even want to hear about  
8 it."

9 Is your mind closed to hearing certain  
10 evidence when you decide the answer to Number Two, that's  
11 what he's asking you.

12 THE POTENTIAL JUROR: The  
13 answer is, no, I am not closed-minded to that.

14 MR. HINSON: As you deliberate  
15 in answering question Number Two on the Special Issue  
16 will you take into account or consider the age of the  
17 defendant?

18 THE COURT: Now, he's not  
19 asking you if you would consider it as something that  
20 would make you answer "Yes" or "No", he's asking you if  
21 it's something that you would be able to consider when  
22 you decide whether to answer "Yes" or "No?"

23 THE POTENTIAL JUROR: He's not  
24 asking me if the defendant's age is a mitigating  
25 circumstance?

1 THE COURT: He's asking you  
2 if you would exclude and not even give it consideration.

3 In other words, he's not trying to get  
4 you committed down to say "Yeah, if somebody is a certain  
5 age I would answer this question this way, if he was  
6 another age I would answer it another way."

7 You know, we have 18 year olds that have  
8 the maturity of 30 year olds and we have 18 year olds  
9 with the maturity of 14 year olds.

10 He's just asking you if you would be  
11 able to give it some consideration when you decide  
12 whether or not to answer that "Yes" or "No", he's not  
13 asking you which way you would answer but is it a factor  
14 that you would take into account when you made your  
15 decision on Number Two.

16 THE POTENTIAL JUROR: I guess  
17 the answer would be that I might somewhat consider it.  
18 I really don't know, to tell you the truth.

19 THE COURT: But you are not  
20 telling us that you would not automatically exclude it  
21 and not listen to it?

22 THE POTENTIAL JUROR: No.

23 THE COURT: You just don't  
24 know how much weight it might give, if any, but you will  
25 listen?

1 THE POTENTIAL JUROR: Yes,  
2 sir.

3 MR. HINSON: Is it the same  
4 as her family background?

5 THE POTENTIAL JUROR: Yes.

6 Q (BY MR. HINSON) Religious training?

7 A Yes.

8 Q Is that "Yes?"

9 A "Yes."

10 Q Now, on that same sheet, Special Issue there,  
11 Special Issue #1 talks about a probability.

12 How would you define "probability?"

13 A That there wouldn't be any shadow of a doubt  
14 in my mind that he would continue to, you know, commit  
15 criminal acts, I guess.

16 Q When something is probable is it 99 to one it's  
17 going to happen or 51-49 that it's going to happen?

18 A I would --

19 Q "If it's probably going to rain tomorrow?"

20 A We can't compare it to the weather man here.

21 THE COURT: Why don't you try  
22 it on --

23 MR. HINSON: "Probability" --

24 THE COURT: Try it on zero to  
25 100, would you put probability below 50 percent, above

1 50 percent, above 55, above 90?

2 THE POTENTIAL JUROR: You  
3 know, I would say above, you know, I would say 75  
4 percent.

5 Q (BY MR. HINSON) Could you define "probability"  
6 as "more likely than not?"

7 A Yes.

8 Q In Special Issue #1 where it talks about a  
9 probability, in answering that question would you define  
10 probability as more likely than not?

11 A That's not the same thing you just asked me?

12 THE COURT: I think he just  
13 worded it a little different.

14 MR. HINSON: I'll try it  
15 again.

16 In answering Special Issue #1 regarding  
17 your definition of probability would you define that as  
18 more likely than not that the defendant would commit  
19 criminal acts of violence that would constitute a  
20 continuing threat to society?

21 THE POTENTIAL JUROR: Yes.

22 I am not -- I hope I am not  
23 misunderstanding what he's asking.

24 THE COURT: You are not.

25 MR. HINSON: Let me assume

1 that you looked at all the evidence when you are  
2 answering Special Issue #1 and as a mathematician you  
3 believe 50.001 percent, is that "probability", would you  
4 answer that question "Yes?"

5 THE POTENTIAL JUROR: Yes.

6 I guess.

7 Q (BY MR. HINSON) Assuming the same set of  
8 circumstances; would you require more evidence than  
9 50.001 to answer that question "No?"

10 MR. TOWNSEND: I'm going to  
11 object, Your Honor. I don't think that has any relevance  
12 at all, these numbers, we are required to prove this case  
13 beyond a reasonable doubt. There is not a percentage on  
14 that, there is not a percentage on the number that -- we  
15 are required to prove Special Issue #1 beyond a  
16 reasonable doubt.

17 THE COURT: Mr. Hinson, I  
18 think by answering the last question you may be lowering  
19 the State's burden of proof.

20 They have a twofold burden of proof,  
21 they must prove beyond a reasonable doubt that it's more  
22 likely than not so by asking the question the way you did  
23 I think you are lessening the State's burden of proof  
24 which I don't believe was your intent so I am going to  
25 sustain the objection and let you rephrase.



1 MR. HINSON: Let me try to  
2 rephrase that question; when we are looking at  
3 "probability" as "more likely than not" would you require  
4 more evidence to answer that question "No?"

5 THE POTENTIAL JUROR: Okay.  
6 He would be proven guilty then you are going into Special  
7 Issue #1?

8 Q (BY MR. HINSON) Yes.

9 A And at that time he would be proven guilty of  
10 capital murder?

11 Q Right.

12 A And now you are asking me if I would be  
13 required to have more evidence to consider?

14 Q Answer the question "No?"

15 A "No" to make it a life sentence?

16 Q Yes.

17 A I would say that I would probably require more  
18 evidence, probably.

19 Q Are you saying you would require more evidence  
20 than a probability, more likely than not?

21 A Hasn't that been asked?

22 THE COURT: We get off on this  
23 occasionally.

24 THE POTENTIAL JUROR: Okay.  
25 I hope I am not misunderstanding what you are saying.

1 MR. LEE: I believe the first  
2 question to me or -- these are totally different  
3 questions, I would request that they repeat it so the  
4 juror understands.

5 MR. OLD: I think if the juror  
6 wants the question repeated he can ask. I don't think  
7 the prosecutor needs to object, that's not an objection.

8 THE COURT: The Defendant's  
9 objection is sustained.

10 Anytime anyone asks a question, whether  
11 me or the lawyer you don't understand you make us do it  
12 again.

13 THE POTENTIAL JUROR: Maybe  
14 he ought to.

15 We are referring to Special Issue #1?

16 MR. HINSON: Right. The  
17 probability, more likely than not.

18 THE COURT: Mr. Pearson, let  
19 me get you to step out of the room for a moment, let me  
20 have a discussion with the lawyers just a minute.

21 You can be thinking about that and clear  
22 your head for a moment and we will start over.

23 THE BAILIFF: Watch your step  
24 there.

25

1 (The following occurred outside the  
2 presence and hearing of the potential juror:)

3  
4 THE COURT: I believe the  
5 juror is totally confused, that's why I sent him out of  
6 the room so he can kind of think about it.

7 MR. LEE: I was, too, for the  
8 record. I don't understand.

9 THE COURT: We are still on  
10 the record.

11 The Court of Criminal Appeals in January  
12 of '93 said the burden of proof on punishment Question  
13 One requires the State to prove that the defendant will  
14 more likely than not commit criminal acts of violence in  
15 the future so as to constitute a continuing threat to  
16 society whether in or out of prison.

17 That's 851 Second 238, Page 250.

18 So the burden of proof is that the State  
19 must prove beyond a reasonable doubt that there -- that  
20 the defendant more likely than not will commit criminal  
21 acts of violence.

22 And frankly I am not sure exactly what  
23 you are trying to pin him down to there, it's kind of  
24 two pronged, first the State has the burden of proof  
25 beyond a reasonable doubt and what their proof is, to

1 prove that it's more likely than not, if it's 75 percent  
2 obviously that's more likely than not or 50 percent so  
3 I think the proper inquiry is whether he could follow the  
4 law and require the State to prove beyond a reasonable  
5 doubt that it's more likely than not that he would commit  
6 criminal acts in the future.

7 I think usually where we have a problem  
8 is where we have mathematics majors which probability  
9 means "Anything is probable."

10 So I think this is why the Court finally  
11 clarified why it means "more likely than not" so I'm not  
12 sure where you want to --

13 MR. OLD: Does that case --  
14 I have read the case, I don't think it says -- does  
15 it instruct you to use that instruction to -- as  
16 opposed --

17 THE COURT: No.

18 MR. OLD: -- does it instruct  
19 you to define "probability?"

20 THE COURT: No.

21 MR. OLD: By "more likely than  
22 not?"

23 THE COURT: No. It just says,  
24 it defines, it establishes the burden of proof, it does  
25 not establish in my opinion a definition.

1 MR. OLD: Okay.

2 THE COURT: So it will not be  
3 a definition that I intend to give but since it is the  
4 law I will, any juror that says to him, "Probability is  
5 less than 50 percent" I will read the law to him and ask  
6 if he can follow that law and if he says "No.  
7 Probability is less than 50 percent" then he's  
8 disqualified.

9 But as long as probability is more than  
10 50 percent then he's okay.

11 MR. OLD: I put Lance in a bad  
12 position, the question he's asking is my question.

13 THE COURT: It's hard to ask  
14 other questions for people.

15 MR. OLD: Are you through with  
16 him other than this?

17 MR. HINSON: No.

18 THE COURT: Your time is up  
19 but we have used a lot of this on this issue and I'm  
20 going to have you tell me the same as I did Bird earlier  
21 what you need to cover and how much time you need to do  
22 it.

23 MR. TOWNSEND: Your Honor, I  
24 would like to point out this witness has not been one of  
25 these long-winded jurors.

1 THE COURT: No. He has not.

2 MR. TOWNSEND: And, you know,  
3 any hang-ups on this witness took place with about three  
4 minutes left in the time to begin with.

5 THE COURT: I think you are  
6 exactly right.

7 Well, it started before that but I think  
8 the hang-up did come in about the last five minutes.

9 MR. HINSON: I believe the  
10 potential juror did take several minutes in answering.

11 THE COURT: Let's not worry  
12 about what he did or didn't take, tell me what you have  
13 not been able to cover and how much time you think you  
14 need and I will decide whether to give it to you.

15 MR. HINSON: Areas involving  
16 criminal cases, whether he has friends or relatives who  
17 were victims, defendants, witnesses.

18 THE COURT: Is that in his  
19 questionnaire? Did he say that has been a -- did he  
20 answer "Yes?"

21 What other areas?

22 MR. HINSON: He answered "No."

23 THE COURT: I have got it in  
24 front of me.

25 MR. HINSON: His religious

1 convictions, "Eye for an eye."

2 MR. TOWNSEND: Your Honor, "An  
3 eye for an eye" goes back into the death penalty, I  
4 believe he's already covered the death penalty.

5 THE COURT: Let him finish  
6 what areas then I will objections from the State.

7 MR. HINSON: To go over the  
8 potential controversy, voluntariness of a confession, I  
9 know he's sort of -- sort of went over this.

10 MR. OLD: You haven't.

11 MR. HINSON: I haven't.

12 I'm not sure at the beginning, that was  
13 my understanding, several matters that were discussed  
14 with him briefly.

15 THE COURT: Is it that you  
16 discussed or that the State discussed?

17 MR. HINSON: And I have had  
18 -- not discussed with him, it would be confessions, on  
19 voluntariness versus for instance is it truthful versus  
20 is it being voluntary.

21 THE COURT: What other areas?

22 MR. HINSON: Then the  
23 definition of reasonable doubt.

24 THE COURT: I don't think  
25 either side had him read that one.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Did he read that or not?

MR. OLD: I don't know.

MR. LEE: I referred to it  
briefly.

MR. HINSON: Considering  
repeat offenses, prior bad acts or convictions.

THE COURT: While we are on  
that subject; I don't know that the defendant is eligible  
for probation, does the defendant have a juvenile record?

MR. TOWNSEND: He has one  
juvenile adjudication, Your Honor.

THE COURT: Does he have an  
adult record? Has he ever been on adult probation?

MR. OLD: No.

THE COURT: Does the State  
have any other evidence of other bad acts that they  
intend to introduce?

MR. OLD: None that was  
admissable at that time and none that was admissable at  
the time the Court ordered to produce.

THE COURT: That's -- then wy  
ask the question?

MR. OLD: I don't know how you  
are going to rule on it. I've got one in the mail this  
week.



1 MR. TOWNSEND: What did you  
2 say "any prior bad acts?"

3 We have got some prior bad acts there  
4 and might be sanity, hasn't been ruled on.

5 THE COURT: So you do have  
6 some bad acts that you are going to attempt to introduce?

7 MR. OLD: I have got one since  
8 we started questioning jurors by mail that's --

9 THE COURT: If the State has  
10 no bad acts they are going to try to get into evidence  
11 then there's nothing to voir dire, if the State does,  
12 whether it comes in or not I think you certainly have a  
13 right to voir dire on it.

14 MR. TOWNSEND: The prior bad  
15 act that he talked about receiving in the mail is one he  
16 received prior to voir dire, it's also one we  
17 supplemented with information later.

18 MR. OLD: He has to designate  
19 those things, not really sending somebody some sort of  
20 report, you don't have to just --

21 THE COURT: This is not the  
22 time to go into this.

23 If the State tells me there's no prior  
24 bad acts they are going to introduce then I'm going to  
25 cut you off on voir dire, if they tell me they do I'm

1 going to go forward so it's your advantage not to argue  
2 with me about whether it's admissable, you are going to  
3 cut yourself off.

4 MR. TOWNSEND: Your Honor, is  
5 it my turn to talk about this?

6 THE COURT: That was my next  
7 question; anything else, Mr. Hinson?

8 MR. HINSON: I would like to  
9 ask him a roundhouse question based on everything he has  
10 heard does he lean for or against life or death, has his  
11 opinion changed since he filled out the questionnaire  
12 because now he has certainly -- he has more information  
13 to deal with than what he was dealing with when he first  
14 came in.

15 THE COURT: I don't think  
16 that's a proper question.

17 I think a proper question would be  
18 "Based on what you have heard today."

19 Let me see -- if you asked him if he  
20 leaned more toward life or death that's not really  
21 telling us anything, I think asking him whether or not  
22 what he has learned today --

23 MR. LEE: That's sort of  
24 implying that he's going to consider conversations as  
25 evidence if you word it anywhere near that.

1 THE COURT: Maybe not  
2 "conversations."

3 MR. LEE: Or "questions" as  
4 evidence.

5 THE COURT: I'm not sure  
6 exactly how that question should be asked.

7 Let me think about that for a moment.

8 MR. OLD: It's certainly "From  
9 what you heard since you answered that question" or "What  
10 you thought about has your opinion as to capital murder  
11 changed from the statement made on page such and such."

12 THE COURT: That's the proper  
13 question.

14 MR. OLD: Then I think you get  
15 an affirmative answer.

16 THE COURT: Then you might be  
17 entitled to go into it some more.

18 MR. OLD: Yes.

19 THE COURT: "How did it  
20 change?"

21 First off the criminal cases, he checked  
22 in his questionnaire, "No", that he has not had any  
23 family members, close friends either arrested or accused,  
24 he had no involvement in the criminal justice system  
25 through the family and relatives, if that's the proper

1 inquiry -- you might ask him if he -- if they have  
2 changed -- let me hear the State on the rest of it.

3 MR. TOWNSEND: "The rest of  
4 it?"

5 THE COURT: Yes. He's  
6 requesting to go into the voluntary confession and  
7 reasonable doubt and whether or not a juvenile record and  
8 bad acts will effect his answer to Number One.

9 MR. TOWNSEND: Your Honor, we  
10 were told before this thing started that we were both  
11 sides would receive 50 minutes, I assume that myself and  
12 the State as well as the Defense is supposed to plan  
13 their questioning to where it will take approximately 50  
14 minutes.

15 I understand from what the Court told  
16 us the other day if we had a witness that was very  
17 lengthy in their answers or very slow to answer that the  
18 Court will allow -- would allow for that, give some  
19 additional time.

20 This potential juror was not that way.

21 If the Defense has several more minutes  
22 of questions they didn't ask I don't believe it is the  
23 fault of the juror, I don't believe it's the fault of the  
24 State or the Court. I don't believe that we should, you  
25 know, make additional allowances because they didn't

1 finish within their 50 minutes when there's really no  
2 extenuating circumstances for their not having finished.  
3 They had the same opportunity and he's not a recalcitrant  
4 witness or witness that caused any problem with anybody  
5 more than the last maybe three to five minutes at the  
6 most.

7 THE COURT: I have to agree  
8 with the State, a lot of time was used in this area  
9 concerning probability. I think he answered that  
10 question quite clearly and then we spent a lot of time  
11 confusing him.

12 I'm not going to let you get back into  
13 the credibility -- excuse me, "into the voluntary  
14 statement", I think you had time to cover it and you  
15 didn't.

16 I'm going to ask him to read the  
17 definition of reasonable doubt and ask him whether or not  
18 he can follow the Court's instruction and follow that  
19 definition.

20 You need to specifically tell me what  
21 you want to ask him about juvenile involvement or prior  
22 acts and then I will decide whether those questions will  
23 or won't be asked.

24 Not just a general area, I need a  
25 specific question at this point.

1 MR. HINSON: I believe I  
2 addressed that "repeat offenders and juvenile."

3 THE COURT: Repeat.

4 MR. HINSON: And I believe my  
5 question to the juror, potential juror, to consider the  
6 age and seriousness and the conduct of the repeat  
7 offender from the previous act, prior bad act or  
8 conviction in assessing whether or not the defendant  
9 would be a threat to society based on that Issue #1.

10 THE COURT: Do you want to ask  
11 if this juror would, assuming that -- they are assuming  
12 that evidence of prior acts come in, would the juror be  
13 able to consider the age of the defendant and the  
14 seriousness of any prior bad act when answering Number  
15 One?

16 MR. HINSON: Yes.

17 THE COURT: I will allow you  
18 to ask that question.

19 I will have him read the reasonable  
20 doubt and I will ask him if his answers on Page 9 changed  
21 and if the answers have changed I think both sides are  
22 entitled to get back into it, if the answers are -- has  
23 not changed, neither side can get back into it.

24 MR. TOWNSEND: On Page 9  
25 -- this may not be anything but you are not going to get

1 back into who he likes better than Nolan Ryan?

2 THE COURT: No. He's going  
3 to start at "criminal justice system."

4 MR. HINSON: The latest,  
5 whether or not he changed his opinion on the death  
6 penalty based on what he heard today?

7 THE COURT: I will allow those  
8 two questions, the one on the age and whether or not he  
9 has changed his opinion.

10 Now, let me be more specific; what  
11 opinion are you talking about?

12 MR. HINSON: The opinion as  
13 he stated on his questionnaire.

14 THE COURT: The offense is  
15 serious enough I believe it's justifiable. Yes, sir.

16 All right. Bring him in.

17 MR. OLD: Your Honor, how did  
18 you rule on whether or not he can ask him anymore  
19 questions about "probability?"

20 THE COURT: He didn't ask to  
21 ask anymore questions about probability but in my opinion  
22 he has sufficiently covered it and I think all we have  
23 done is confused the juror.

24 I'm going to read the law to the juror  
25 unless there's an objection from either side and ask him

1 if he can follow that law or if he disagrees with that  
2 law.

3 If he disagrees with it then I will --  
4 I will take that up.

5 MR. OLD: You are taking the  
6 questions only --

7 THE COURT: Mr. Hinson will  
8 be allowed to ask the two questions I told him he could  
9 ask.

10 MR. OLD: Thank you.

11 THE COURT: I am going over  
12 "reasonable doubt", Page 9, and instruct him as to the  
13 law on "more likely than not."

14  
15 (The following occurred in the presence  
16 and hearing of the potential juror:)

17  
18 THE COURT: Mr. Pearson, we  
19 discussed with you or both sides have discussed with you  
20 the fact that on that first issue, first Special Issue  
21 on your paper before you. (Indicating)

22 THE POTENTIAL JUROR: Okay.

23 THE COURT: That the State has  
24 the burden of proof, meaning the State must prove beyond  
25 a reasonable doubt that that answer must be "Yes."



1 In essence the law says the answer is  
2 "No" because the State has to prove its question so if  
3 they don't prove it's "Yes" what is it? It's "No."

4 So the State's burden is to prove to you  
5 beyond a reasonable doubt that this answer should be  
6 "Yes."

7 And our courts have told us that the  
8 State must prove beyond a reasonable doubt that the  
9 defendant will more likely than not commit criminal acts  
10 of violence in the future so as to constitute a  
11 continuing threat to society.

12 Can you follow that law?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: And will you make  
15 the State prove beyond a reasonable doubt that it's more  
16 likely than not that a person would commit criminal acts  
17 of violence in the future before you would answer that  
18 question "Yes?"

19 THE POTENTIAL JUROR: Yes.

20 THE COURT: There is a paper  
21 to your left, long sheet of paper. (Indicating)

22 THE POTENTIAL JUROR: All  
23 right.

24 THE COURT: Not -- not the  
25 long sheet, a sheet with a lot of writing on it.

1 (Indicating)

2 THE POTENTIAL JUROR: Okay.

3 THE COURT: That is an  
4 instruction that is included in all criminal cases, it  
5 tells all jurors that the defendant is presumed to be  
6 innocent and then defines toward the middle half to the  
7 bottom, "reasonable doubt."

8 Please read that to yourself and tell  
9 me when you finish.

10 THE POTENTIAL JUROR: Okay.

11 THE COURT: You have been told  
12 that the State must prove beyond a reasonable doubt the  
13 guilt and if they want a death penalty they must prove  
14 beyond a reasonable doubt, the answer should be "Yes" to  
15 question Number One.

16 Do you agree or disagree with that type  
17 of written definition of "reasonable doubt?"

18 Can you follow that law is what I'm  
19 asking you?

20 THE POTENTIAL JUROR: Yes.  
21 I can.

22 THE COURT: Does your  
23 definition of reasonable doubt differ from what you have  
24 read?

25 THE POTENTIAL JUROR: No.

1 THE COURT: I want you to look  
2 back at your questionnaire, I'm going to hand it to you.

3 On Page 9 starting with "criminal  
4 justice system" you answered three questions "No", on  
5 Page 10 you answered five questions "No."

6 Now, it has been a couple of weeks since  
7 you filled this out. I just want you to look at it and  
8 see if anyone of those answers have changed.

9 It's just asking about prior involvement  
10 of you, your family and friends and the criminal justice  
11 system.

12  
13 (Handed to the potential juror.)

14  
15 THE POTENTIAL JUROR: No.

16 THE COURT: None of those have  
17 changed?

18 THE POTENTIAL JUROR: No.

19 THE COURT: I believe Mr.  
20 Hinson has a couple of more questions for you, one of  
21 them will require you to look back at your explanation  
22 of the death penalty so I will let you hold that for a  
23 moment.

24 Mr. Hinson.

25 MR. HINSON: Mr. Pearson, let

1 me ask you that question that relates back to your  
2 questionnaire; first you stated that under the proper  
3 circumstances the death penalty is appropriate.

4 Now, based on what you have heard today  
5 and what you have learned today has your opinion as to  
6 -- your opinion as to the death penalty changed?

7 THE POTENTIAL JUROR: No.

8 Q (BY MR. HINSON, CONTINUING VOIR DIRE  
9 EXAMINATION) During the course of the second phase  
10 of this trial, capital murder trial, the punishment  
11 phase, there may or may not be evidence presented to you  
12 regarding prior acts, prior convictions of the defendant.

13 If that evidence is presented to you  
14 and as you answer jury Issue #1 -- do you have the jury  
15 issues -- the jury questions, Special Issue #1?  
16 (Indicating)

17 A Okay.

18 Q If you heard evidence of prior bad acts or  
19 prior convictions could you consider age and the  
20 seriousness of the conduct in assessing whether the  
21 defendant would constitute a continuing threat to  
22 society?

23 A Yes. If I am understanding your question  
24 right.

25 MR. HINSON: Pass the witness.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Thank you, Mr.

Hinson.

Sir, if you will step out we will have some further directions for you in a moment and you are almost finished.

THE POTENTIAL JUROR: Okay.

(The following occurred outside the presence and hearing of the potential juror:)

THE COURT: Does the State have any challenges?

MR. TOWNSEND: None, Your Honor.

THE COURT: Mr. Hinson or Mr. Old?

MR. OLD: Yes, Your Honor. We have a challenge for cause.

The potential juror, Bobby Keith Pearson, stated that he would require in order to answer Special Issue #1 "No" he would require more than a mere probability, he would require 75 percent proof and also used the word "shadow of a doubt" or that type of proof as the meaning of "probability", that he would -- that he would not judge it merely by "more likely than not"

1 and he has indicated a prejudice against the law as  
2 charged and cannot follow the law.

3 THE COURT: Do you have any  
4 other challenges?

5 MR. OLD: That's it, Your  
6 Honor.

7 THE COURT: Mr. Lee?

8 MR. LEE: Your Honor, I  
9 believe as a whole his testimony was that he could follow  
10 the charge as given and if he wanted to give us a higher  
11 standard of proof that's his prerogative.

12 THE COURT: I have to agree  
13 with the State, a probability at 75 percent or more is  
14 certainly that, it inures to the benefit of the Defense  
15 and I don't see how you can rely on their putting a  
16 higher burden on the State than on you.

17 The State only has to prove it's more  
18 likely than not, this man stated the State has to prove  
19 it's more likely than not.

20 MR. OLD: That's not what I  
21 understood he said.

22 THE COURT: It's what I  
23 understood he said.

24 MR. OLD: We vary on what we  
25 think he said.

1 MR. LEE: Also the Court asked  
2 him direct when you brought him back that he would follow  
3 the law and I think that clears up any statement he might  
4 have made.

5 THE COURT: What do you think,  
6 Mr. Old?

7 MR. OLD: What he said was to  
8 answer Special Issue #1 "No" saying that there -- there  
9 is not a probability that the defendant would commit an  
10 act of violence in the future being a danger to society.

11 THE COURT: I think he may  
12 have misunderstood.

13 MR. OLD: He said that he  
14 would require, he first said "Probability means shadow  
15 of a doubt" then he defines that as a 25 percent weight  
16 to it, not that he would have to believe that not by 75  
17 percent.

18 THE COURT: Then the proper  
19 challenge is he's requiring you --

20 MR. OLD: To prove something.

21 THE COURT: -- to prove  
22 something?

23 If that's what he meant I certainly  
24 agree that he's disqualified, I do not believe that's  
25 what he meant.

1 I will certainly not rely on what I  
2 remember, I will bring him back and ask him.

3 MR. OLD: Okay.

4 THE COURT: But I think he  
5 meant that it required 75 percent before he answered  
6 "Yes."

7 MR. LEE: When you did  
8 question him you questioned him on that, he said he could  
9 go by the law.

10 THE COURT: I understand and  
11 he did say that but I don't -- I do remember at some  
12 point there was a question asked that could establish a  
13 burden of proof and I think that may have been the  
14 question.

15 I think again it was confusion on the  
16 juror's part but I am not going to just assume I am right  
17 without talking with him.

18 Are there any other challenges?

19 Bring back Mr. Pearson.

20  
21 (The following occurred in the presence  
22 and hearing of the potential juror:)

23  
24 THE COURT: I'll bet you will  
25 be glad when we finish up.



1 THE POTENTIAL JUROR: Actually  
2 I'm heading to Fort Worth on a big bus for a golf  
3 tournament.

4 THE COURT: Mr. Pearson, we  
5 have a misunderstanding on how you answered a question,  
6 some seem to remember it one way and some seem to  
7 remember another way and it goes back to this question,  
8 Number One, the Special Issue number.

9 Now, you understand the Special Issue,  
10 you understand the State has the burden of proof, do you  
11 also understand the defendant has no burden anywhere  
12 during this trial, they don't have to bring anything to  
13 you, they don't have to disprove anything to you, they  
14 don't have to disprove anything, do you understand that?

15 THE POTENTIAL JUROR: I  
16 understand.

17 THE COURT: I believe there  
18 was a question asked by Mr. Hinson and I think the  
19 question was in order to answer that question "No" would  
20 you have to be convinced that there was -- well, I don't  
21 know that I can paraphrase your question; "Are you going  
22 to require the Defense to prove that the person will not  
23 be dangerous in the future or are you going to have the  
24 State have to prove to you that he will be dangerous?"

25 See, before you answer that question you

1 have already found this person guilty of capital murder.

2 THE POTENTIAL JUROR: Right.

3 THE COURT: Now you have  
4 decided by answering that question "Yes" means "death  
5 penalty", "No" means "life sentence?"

6 THE POTENTIAL JUROR: I think  
7 I see where the confusion is. I was confused, too.

8 I would say that I am going to require  
9 the State to prove to me that he is -- let me think about  
10 that -- I think that I would require them to prove to me  
11 that.

12 THE COURT: Now, who is  
13 "them?"

14 THE POTENTIAL JUROR: The  
15 State.

16 THE COURT: Okay.

17 THE POTENTIAL JUROR: That  
18 before I would answer that question "Yes."

19 THE COURT: If the State  
20 failed to prove it would you answer "No?"

21 THE POTENTIAL JUROR: Let me  
22 think about that.

23 THE COURT: I just want to  
24 make sure that all jurors understand exactly how this  
25 works, they have the burden of proof.

1 THE POTENTIAL JUROR: I would  
2 say the answer is "Yes."

3 THE COURT: See, the State has  
4 all the burden, the defendant never has to prove anything  
5 to you so the defendant doesn't have to give you any  
6 evidence saying he wouldn't be a danger, he very well  
7 may want to give that evidence and you can certainly take  
8 into account where the evidence comes from, you can look  
9 back at the facts of the case to answer these questions.

10 It very well could be in the trial of  
11 this case or any capital case if the State gets a  
12 conviction at the punishment phase you may not hear  
13 anything different, it may not be anything else and then  
14 at that point you go back and reexamine the facts of the  
15 case.

16 So in answering that question you look  
17 at the facts of the case and any additional evidence that  
18 has been presented but the lawyers seated over here,  
19 meaning the Defense, don't have to prove anything to you  
20 so they don't have to disprove that, it's an automatic  
21 "No" until the State can prove that it should be "Yes."

22 Can you follow that law and make the  
23 State prove it?

24 THE POTENTIAL JUROR: Yes.

25 THE COURT: Would you require

1 the Defense to disprove it -- well, that's not a fair  
2 question.

3 THE POTENTIAL JUROR: I think  
4 I was forgetting that it was Phase II, I was forgetting  
5 it was Phase II of the trial awhile ago.

6 THE COURT: Does that satisfy  
7 the inquiry we had a moment ago or discussion we had a  
8 moment ago, Mr. Old?

9 MR. OLD: He was beginning to  
10 say something, I was real curious as to what he was going  
11 to say, he said "Phase II of the trial."

12 THE POTENTIAL JUROR: I think  
13 awhile ago I had, you know, neglected to realize the  
14 sequence of events there and I was assuming that we were  
15 already past this part right here and, you know, the  
16 decision had already been made, you know, whether the  
17 defendant was guilty or not guilty or whatever but -- but  
18 by looking at the deal here. (Indicating)

19 THE COURT: "The flow chart?"

20 THE POTENTIAL JUROR: "The  
21 flow chart", I think I got out of sequence awhile ago  
22 when I answered that question.

23 THE COURT: So you are telling  
24 me now, though, you understand the State has the burden  
25 and if they don't prove it you are going to answer it

1 "No?"

2 THE POTENTIAL JUROR: Yes.

3 THE COURT: And if that should  
4 be answered "Yes" you will answer it "Yes?"

5 THE POTENTIAL JUROR: Yes.

6 THE COURT: That is that the  
7 State must prove beyond a reasonable doubt that it's more  
8 likely than not?

9 THE POTENTIAL JUROR: Yes.

10 THE COURT: Do you have any  
11 questions?

12 MR. HINSON: I think Bird  
13 does.

14 THE COURT: Mr. Old?

15 MR. OLD: Judge, I may have  
16 been confused again, is his inquiry that he started and  
17 finished -- he said that, if I understood him correctly,  
18 he didn't realize he would be finding him guilty and  
19 answering those questions in one deliberation think.

20 As a result I'm not sure he's  
21 understanding the flow chart. The fact that the jury  
22 first deliberates as to whether he's guilty or innocent  
23 or --

24 MR. TOWNSEND: I want to  
25 object.

1 Are we starting over again?

2 THE COURT: No. We are not  
3 going to start over again.

4 MR. TOWNSEND: Is Mr. Old  
5 going to start questioning him again?

6 THE COURT: But I do see Mr.  
7 Old's concern and I'm going to explain it to him and if  
8 he appears to be confused we'll go over it again.

9 There are two phases to the trial, in  
10 the first part of the trial the State puts on their  
11 evidence, they rest, the Defense if they wish to put on  
12 their evidence if they wish to do so then they rest.

13 Each side presents their argument, you  
14 are retired to deliberate, you have one decision to make,  
15 "Is he or is he not guilty?"

16 THE POTENTIAL JUROR: Yes.

17 THE COURT: If you find that  
18 he's guilty of capital murder then we go into the second  
19 phase of the trial which has to do with punishment, once  
20 you find a person guilty of capital murder the best that  
21 can happen is a life sentence so in essence we have an  
22 automatic life sentence when you find him guilty.

23 THE POTENTIAL JUROR: Yes.

24 THE COURT: Then if the State  
25 can prove to you that he's going to be a danger in the

1 future that elevates that life sentence up to death and  
2 all 12 of you have to agree if the answer should be  
3 "Yes."

4 If the State can't prove that he's going  
5 to be a danger in the future then you have to answer that  
6 "No", which means a life sentence.

7 If you do answer it "Yes, that he will  
8 be a danger" then you look to that second question and  
9 all that second question is is a relief valve.

10 Basically "Do you see anything in his  
11 background, his age, his moral culpability, his  
12 blameworthiness, do you see anything in there that tells  
13 you that he should be spared a death sentence?"

14 If you think he should be spared the  
15 death sentence you say "Yes", if you think he should not  
16 be spared you answer "No."

17 Do you understand the process?

18 THE POTENTIAL JUROR: Yes.

19 THE COURT: Thank you, sir.

20 I will have some instructions for you  
21 in just a minute then you are going to be free to go but  
22 we won't bring you back in.

23  
24 (The following occurred outside the  
25 presence and hearing of the potential juror:)

1 THE COURT: Challenge for  
2 cause overruled.

3 I find the juror qualified.

4 Go ahead and tell him he's free to  
5 leave, we will let him know next week.

6 MR. OLD: I have another  
7 challenge for cause to make which is something that arose  
8 after I made my last one.

9 THE COURT: You may do so.

10 MR. OLD: Mr. Townsend  
11 objected to me questioning the witness, I directed my  
12 remarks directly to the Court, I did that intentionally  
13 because at this point I felt the Court was interrogating  
14 the witness.

15 The witness directed his response to  
16 me, I paused for the Court to answer the question really  
17 that he asked before I answered.

18 That remark is from the side bar, I had  
19 addressed the Court, I was not attempting to question the  
20 witness and it is inflammatory to the point that it's  
21 done in the presence of this juror, he should be excused.

22 THE COURT: I do not believe  
23 that it upset the juror. I don't think the juror paid  
24 much attention to what we were doing, he was more  
25 concerned with what he was supposed to do in trying to



1 figure out the answer.

2 The challenge is denied.

3 I'm going to instruct both sides if you  
4 have an objection address them to the Court and they must  
5 be legal objections. He has objected several times and  
6 it wasn't a legal objection and you objected several  
7 times and they were not legal objections. I want proper  
8 legal objections if they are not properly stated I don't  
9 want any argument.

10 Make your objection. If I want further  
11 comment I will ask for it, otherwise we will tell him to  
12 go to Fort Worth.

13 We will take a break.

14  
15 (Recess.)

16  
17 (The following occurred in the presence  
18 and hearing of the potential juror:)

19  
20 ALTON DEAN ALEXANDER, Potential Juror #358,  
21 was called as a Potential Juror and, having been  
22 previously sworn by the Court, testified as follows:

23  
24 THE COURT: How are you doing,  
25 Mr. Alexander?

1 THE POTENTIAL JUROR: Pretty  
2 good.

3 THE COURT: We have taken up  
4 a lot of your day and the last couple of days and I'm  
5 sorry we haven't gotten to you as quick as we hoped to.

6 We just never know how long you are  
7 going to last, sometimes we may talk to a juror for just  
8 a few minutes, sometimes like with the last day it has  
9 been a couple of hours.

10 Mr. Alexander, I am Gary Stephens, I am  
11 presiding over this trial.

12 We have two lawyers representing the  
13 State of Texas, we have the elected District Attorney  
14 from Morris County, Mr. Richard Townsend, we have the  
15 newly elected District Attorney of Cass County that will  
16 take office in January, Mr. Randall Lee.

17 We have two lawyers for the Defense, Mr.  
18 Bird Old, III, Mr. Lance Hinson.

19 MR. HINSON: Good afternoon.

20 THE COURT: Next to Mr. Hinson  
21 is the person charged, Mr. Billy Wardlow.

22 Now, Mr. Alexander, the lawyers have  
23 read your questionnaire, they are familiar with the  
24 answers.

25 They need to discuss some of those

1 answers with you and they are also going to discuss the  
2 law that applies.

3 You will be asked a lot of questions and  
4 the answers will let us know whether or not to put you  
5 on the jury.

6 In order to answer the questions you  
7 have to be able to understand and follow the law, as a  
8 policeman you probably know that you don't have to  
9 necessarily agree with the law, you have to follow the  
10 law but if you disagree with the law and you can still  
11 put aside that disagreement you are a qualified juror.  
12 But if you disagree with the law to such an extent that  
13 you can't follow it then you are not qualified so we need  
14 to question you about your ability to follow the law.

15 A person can be legally qualified and  
16 that does not necessarily mean he's going to be a good  
17 juror or an appropriate juror, there can be something in  
18 a juror's background or juror's opinion that just lets  
19 us know that this isn't the case for you.

20 So we want to know something about you,  
21 what your thoughts are, how you got there. In general  
22 we want to find out all we can about you and the best way  
23 we can do that is to ask questions and have you just open  
24 up and be as honest as you can.

25 We don't really care what your answers

1 are, I don't mean to be rude by that, it doesn't matter  
2 what your answers are but it very much matters that we  
3 understand where you are coming from.

4 There aren't any right or wrong answers,  
5 there's no right or wrong opinions.

6 So just open up and share your views  
7 with us and we will try to make this as short as  
8 possible.

9 Who's going for the State?

10 Mr. Lee.

11  
12 VOIR DIRE EXAMINATION

13 BY MR. LEE

14  
15 Q Mr. Alexander, as the Judge just mentioned, my  
16 name is Randy Lee and I'm from Cass County.

17 I don't believe I know you, do I?

18 A No.

19 Q I know some peace officers in various counties  
20 but I don't believe -- and this is Richard Townsend.  
21 (Indicating)

22 Have you been over in Morris County or  
23 done any work over there that you have worked with him?

24 A No. Never worked with him.

25 Q Do you know him?

1 A I have seen him, you know, but never met him.

2 Q Anything about seeing him around or knowing  
3 him, who he is, that would interfere with your ability  
4 to decide fairly in this case?

5 A No.

6 Q And Bird Old is the -- is one of the Defense  
7 Attorneys, I believe you stated that you do know him.

8 How do you know him?

9 A I have just seen him around.

10 Q Through your job?

11 A Through my job.

12 I have never been on trial or anything  
13 where he was involved.

14 Q Anything about that or knowing him or his  
15 reputation that would interfere with your ability to  
16 decide fairly?

17 A No.

18 Q And Lance Hinson is an attorney here in Mount  
19 Pleasant, I assume you know him or know of him?

20 A I just know of him.

21 Q There's nothing about that that would interfere  
22 with your ability, is that fair?

23 A Yes.

24 Q As the Judge mentioned, there's no right or  
25 wrong answer, we are just trying to -- sometimes you have

1 to get the appearance of propriety or avoid impropriety  
2 more so than even what happened and that's what we are  
3 trying to do is find 12 people to listen to the evidence  
4 and decide fairly.

5 A Yes.

6 Q I assume as a peace officer you are used to  
7 enforcing the laws and some of the laws you may or may  
8 not agree with?

9 A Yes.

10 Q And really what we are trying to find, each  
11 person can't be fair or couldn't serve on every type or  
12 type of case, for instance I have several relatives and  
13 some of my relatives I am going to believe them no matter  
14 what they say, I wouldn't be fair on that, and some of  
15 my relatives don't want me on their jury because I'm not  
16 going to believe that Easter falls on Sunday.

17 So that's what we are doing, trying to  
18 decide whether you can be fair and whether you can decide  
19 and obviously you are going to get a lot of questions  
20 because you are a peace officer and whether you can put  
21 that aside and your knowledge and whether you can decide  
22 fairly.

23 First of all; can you?

24 A Yes, sir.

25 Q Do you think your job will interfere with your

1 ability to decide fairly?

2 A I don't think so.

3 Q It hasn't changed your view on life?

4 A No.

5 Q I am sure you understand as an officer the  
6 difference between murder and capital murder?

7 A Yes, sir.

8 Q Just in case I will go over briefly some of the  
9 explanation, obviously murder is the intentionally and  
10 knowingly killing someone.

11 Have you ever investigated a murder in  
12 your job or --

13 A Yes.

14 Q -- have you ever investigated capital murder?

15 A Yes.

16 Q Capital murder obviously is murder plus  
17 something, a felony, killing a police officer, fireman,  
18 in the line of duty or killing more than one person,  
19 committing a robbery and murdering someone or rape,  
20 burglary, etcetera.

21 And in this case it's a robbery  
22 resulting -- a death resulting in a robbery and you kind  
23 of understand the difference between murder and capital  
24 murder?

25 A Yes.

1 Q I am sure you would.

2 Would you have any problem -- what is  
3 your feeling on the death penalty?

4 A What are my feelings on the death penalty?

5 Q Do you think it's appropriate?

6 A In some cases.

7 Q I'm sure you can understand the law, do you  
8 agree with the law on the death penalty as to when it's  
9 appropriate?

10 A Yes.

11 Q Is it too harsh or too soft, about the way you  
12 feel?

13 A It all depends on the case.

14 Q You personally could, if 11 people had decided  
15 that the death penalty was appropriate by their answer  
16 and you were the twelfth person, make the decision?  
17 Could you vote in such a way that would require the death  
18 penalty if you felt it was --

19 A If that's what I felt.

20 Q And do you understand that the State has the  
21 burden beyond a reasonable doubt?

22 A Yes.

23 Q And the Defense has no burden whatever?

24 A Yes.

25 Q That in fact the defendant -- I am sure that



1       you are familiar with the Fifth Amendment rights, the  
2       defendant can sit there and not say a word and the law  
3       requires you to be able not to hold that against him, can  
4       you do that?

5       A           Yes.

6       Q           Could you make us prove our case beyond a  
7       reasonable doubt?

8       A           In this case we are seeking the death penalty  
9       so it's a very serious case and that's one of the reasons  
10      that we are talking to you individually, not like the big  
11      group in general make doubly sure and it's the only  
12      chance we get to talk to you and the only chance that you  
13      get to talk to us with the exception of Bird, so if you  
14      get confused or misunderstood what I'm saying or the  
15      Judge just say so and we'll rephrase the question.

16                   Obviously there it's a two-part trial  
17      in Texas, we have the first part of guilt/innocence and  
18      we only present evidence of guilt or innocence, we don't  
19      go into punishment.

20                   And then if you find him guilty of  
21      capital murder then we go to the sentence part, that's  
22      when we introduce evidence as to punishment.

23                   Have you testified in trial?

24      A           Yes, sir.

25      Q           And kind of understand the difference there?

1 A Yes.

2 Q And obviously the much criticized parole.

3 In the State of Texas the law requires  
4 and the Judge will give you an instruction to parole,  
5 however in this case I anticipate him giving instruction  
6 that if the Defendant receives a life sentence for  
7 capital murder he will receive a mandatory minimum of 35  
8 years before he's even eligible. However, you are not  
9 to allow, to consider whether or if he ever gets out of  
10 the pen, can you put your knowledge, especially your  
11 personal knowledge of the parole system aside and decide  
12 based on the evidence and not consider whether he will  
13 get out on parole or not?

14 A Yes, sir.

15 Q Probably or I am assuming you are not real  
16 knowledgeable on the Special Issues or at least I wasn't  
17 coming into this case that is required on capital cases  
18 and the extra procedures that are involved.

19 You have an exhibit up there entitled  
20 "Special Issues", see if you can find it.

21 A Here. (Indicating)

22 Q All right. Could you read Special Issue #1 to  
23 yourself?

24 A Okay.

25 Q This Special Issue would come to you if you are

1 on the jury after the guilt/innocence portion, you would  
2 have already found the man guilty of capital murder and  
3 we have a Special Issue and obviously the law requires  
4 you be able to consider the full case, full range and  
5 consider it.

6 In other words, you can't jump from one  
7 all the way to the end and decide what you want after you  
8 have already decided that person is guilty of capital  
9 murder and then there is a second part of the trial where  
10 we introduce evidence, can you withhold your decision as  
11 to what should be done to a defendant until the second  
12 part of the case and consider all the evidence that comes  
13 in the punishment phase?

14 A Yes, sir.

15 Q Let's say you went back up in your mind in the  
16 first part, you heard the evidence, "I find him guilty  
17 of capital murder, he needs the death penalty or he needs  
18 life", can you withhold that until all the evidence?

19 A Yes.

20 Q Obviously that talks about criminal acts of  
21 violence and I'm sure you are very familiar with that,  
22 doesn't necessarily require murder, it's any type of  
23 violence, criminal violence, it could be assault, simple  
24 assault, wife beating, robbery, any number of violent  
25 acts and the standard there is that we prove -- the State

1 proved beyond a reasonable doubt that there is a  
2 probability he will commit future acts of violence.

3 Can you hold us to that burden?

4 A Yes. I believe so.

5 Q And will the fact that you are a peace officer  
6 interfere and what you see on the street interfere with  
7 that or make you a little likely to give it to him or  
8 less likely?

9 You are allowed to take your personal  
10 experiences in, obviously you can't ignore that you are  
11 a cop and if the Court gives you an instruction to burden  
12 of proof and what we have to prove can you hold us to  
13 that, make sure we do our job?

14 A Yes, sir.

15 Q The Special Issue #2, could you read that and  
16 we'll talk about it?

17 A Okay.

18 Q That's basically in legalese but the way  
19 understand the reading of that that it's basically a  
20 safety valve to allow -- okay, you found the defendant  
21 guilty of capital murder, he's committed capital murder  
22 and you have already found that he's going to be a danger  
23 to society in the future, there's a probability that he  
24 will commit acts of violence, whether that's in the  
25 penitentiary or whether that's on the streets but the law

1 requires you to be able to at least consider listening  
2 to the evidence that is introduced to mitigating  
3 circumstances. The law doesn't tell you what "mitigating  
4 circumstances" is but the evidence that is offered, that  
5 you at least have to listen to it, think about it and  
6 consider it, not that you will do it but that you have  
7 to consider, have to think about it and consider it.

8 For instance, many people like to  
9 consider background, how a child was raised, how, you  
10 know, whether his daddy was with him, whether he had a  
11 daddy, that sort of thing or age, intelligence --  
12 obviously people sometimes don't feel like a mentally  
13 retarded person shouldn't be held to the same standard  
14 as the average citizen who can function.

15 But that's really your definition, what  
16 you can do and what you can consider.

17 Can you listen to the evidence, decide  
18 it as a whole, whether you feel like there's mitigating  
19 circumstances that would make a defendant deserve live  
20 rather than death or get life?

21 A Yes.

22 Q And it's our burden to prove to you, can you  
23 hold us to that burden?

24 A Yes.

25 Q And obviously in the trial there's no

1 guarantees, for instance in this case he's charged with  
2 committing a murder during the course of a robbery, it  
3 may be or if there's no evidence submitted as to the  
4 robbery or insufficient evidence that there was a robbery  
5 even take place would you have any problem finding him  
6 guilty of murder as opposed to capital murder?

7 A No.

8 Q If we don't do our job you can do that?

9 A Right.

10 Q And when you have murder obviously there's a  
11 wide range of punishment, anywhere from five years  
12 probation to life in the penitentiary and obviously as  
13 an officer you know there's different types of murder?

14 A Yes, sir.

15 Q There could be a mercy killing where an 80 year  
16 old couple lived together all their life, been married,  
17 had their kids and say the wife is dying of cancer, is  
18 on life support and in very much pain, begging her  
19 husband, "Please unplug me, I can't take it anymore" and  
20 then he does.

21 Obviously under Texas law that's murder.

22 In a situation like that would that be  
23 a situation that you could consider say five years  
24 probation?

25 A Yes, sir.

1 Q And of course it's not what you would do but  
2 that could you consider?

3 And obviously there's more violent  
4 individuals and gruesome killings that maybe life would  
5 be more appropriate, can you consider that full range of  
6 punishment?

7 A Yes.

8 Q And this is something I wasn't anticipating  
9 asking a peace officer but the law requires that you,  
10 while they are on the stand you give each witness an  
11 equal footing or you don't let one person start ahead of  
12 another, that you make your determination on their  
13 testimony, what you see and what you hear.

14 For instance, as a peace officer would  
15 you take another policeman's word over an average  
16 citizen? Would you give them a head start?

17 A No.

18 Q Are there good cops and, well, "bad cops?"

19 A Yes. There are.

20 Q Efficient cops as well as inefficient cops?

21 A Yes.

22 Q And you would make that decision on what you  
23 see or hear, make a determination whether a person is  
24 telling the truth like you would on anyone else?

25 A Yes.

1 Q Other professions, preachers, would you give  
2 a preacher an advantage over an average citizen?

3 A No.

4 Q Obviously there are good preachers and bad  
5 preachers.

6 Do you know many of the officers in  
7 Morris County?

8 A No.

9 Q Do you work with them regularly?

10 A I don't work with them.

11 Q What are your duties here?

12 A I am a patrolman here in the City.

13 Q So you pretty much stay on the streets here  
14 locally?

15 A Yes.

16 Q Do you even know any of the officers in Morris  
17 County?

18 A Not personally. I have met one, I can't even  
19 think of his name right now.

20 Q We'll give a list or there is a list, the  
21 Defense Exhibit. (Indicating)

22 A "Witness List." (Indicating)

23 Q Are you close friends with any of these people  
24 on this Witness List?

25 A No. I met Vernon Cope, that's who I was trying



1 to think of.

2 THE COURT: Look. There are  
3 three pages.

4 MR. LEE: Go ahead and kind  
5 of glance over there and see if there's any obvious --

6 THE POTENTIAL JUROR: I met  
7 David McFarland.

8 Q (BY MR. LEE) Basically I will narrow it a  
9 little bit, you will know or know of some of them, is  
10 there -- is there anyone that you know so well that it  
11 would interfere with your ability to decide fairly?

12 A No.

13 Q That you would take care of?

14 A I have worked with one here. (Indicating)

15 Q Who is that?

16 A "Harry Washington."

17 Q Anything about your knowledge of Harry  
18 Washington?

19 A No.

20 Q The fact that he was unsuccessful candidate for  
21 Sheriff, would that interfere with your ability to  
22 decide?

23 A No.

24 Q I'm going on a little different topic now and  
25 obviously the defendant has the Fifth Amendment -- are

1       you finished reading, I'm sorry, I am rushing you?

2       A           That's okay. I am through.

3       Q           Is there anybody on that list that would  
4       interfere with your ability to decide fairly if they  
5       testified?

6       A           No.

7       Q           Obviously you are familiar with the Fifth  
8       Amendment right to remain silent.

9                   If it develops in this case that the  
10       State offers their evidence and the Defendant does not  
11       testify, just remains quiet would you hold the fact that  
12       he remains quiet against him?

13       A           No.

14       Q           Would you -- that goes for the punishment, too.  
15       A lot of people just want to hear someone get up and say,  
16       "I'm sorry" or something to that effect, would you hold  
17       the fact that he just remained quiet and didn't say  
18       anything against him?

19       A           No.

20       Q           Would you give us a little bit -- the fact --  
21       would you give our evidence a little more credibility if  
22       he remained quiet or if the Defense Attorneys don't  
23       introduce any evidence?

24       A           No.

25       Q           And base your decision on what you see and not

1 what you don't see or hear?

2 A Yes.

3 Q And obviously you have probably testified to  
4 Grand Juries before?

5 A Yes, sir.

6 Q And you realize that indictment is not  
7 evidence?

8 A No.

9 Q It's that, just simply the charge gets them  
10 into Court?

11 A Yes.

12 Q Another area that is a common concern of  
13 officers and complaint of officers but obviously -- many  
14 times people, defendants give confessions or give  
15 statements and there is various requirements that are  
16 necessary for an officer to take a statement, for  
17 instance; an officer can't beat it out of them, right?

18 A No.

19 Q That's involuntary.

20 Say in this case if the evidence comes  
21 in, the statement comes in, a confession comes in but it  
22 turns out it was beat out of the Defendant, could you set  
23 aside that confession, the knowledge of that confession?

24 A Yes, sir.

25 Q And consider it on the other evidence?

1 A Yes, sir.

2 Q If some other rights -- if you believe that  
3 some of the other rights were violated based on the  
4 direction of the Judge can you also set that aside and  
5 don't effect -- if they forgot to read him his Miranda  
6 Rights, that's not the case in this case but if they  
7 forgot to read him his Miranda Rights would you set that  
8 aside?

9 A Yes.

10 Q Obviously, you know, you are going to know it  
11 took place, could you set aside that if -- if it's not  
12 legally obtained?

13 A Yes.

14 Q I will go over your questionnaire.

15 Is there any reason that you can think  
16 of that why you could not decide and sit fairly on this  
17 case?

18 A No. Not that I can think of.

19 Q Are you very knowledgeable of Cason area?

20 A Not real knowledgeable. I know where it is.

21 Q Do you know Mr. Cole?

22 I believe you stated you didn't?

23 A No. I don't.

24 Q And did you know the -- Mr. Wardlow?

25 A No.

1 Q His parents I believe are voluntary firemen  
2 down in the Cason area, to your knowledge have you worked  
3 with them?

4 A What is his dad's name?

5 MR. TOWNSEND: "Jimmy."

6 MR. LEE: "Jimmy Wardlow."

7 THE POTENTIAL JUROR: I have  
8 met him.

9 Q (BY MR. LEE) I believe he runs the voluntary  
10 fire department.

11 A About three or four years ago I worked on fire  
12 trucks for him on the side.

13 Q Anything about that that would interfere with  
14 your ability to decide fairly?

15 A No.

16 Q Basically I will probably be briefer than I am  
17 with most of you because I think you are knowledgeable  
18 of the system and knowledgeable of what is required but  
19 can you make us and hold us to our burden and not jump  
20 ahead if the Judge or if the instruction -- obviously you  
21 can't make a decision at the end of guilt or innocence  
22 to the defendant, what the punishment should be because  
23 you haven't heard all the evidence?

24 A No.

25 Q And can you hold us to the burden that we are

1 required by law to produce?

2 A Yes, sir.

3 Q And can you not jump from -- on the Special  
4 Issue can you take the Special Issues in order and fairly  
5 consider the evidence and decide?

6 A Yes.

7 Q On mitigating evidence, that is Special Issue  
8 #2, that can come from us, the State, you know, obviously  
9 we are going to introduce his age, we will probably  
10 introduce some of his family life, there will be some  
11 evidence --

12 MR. OLD: I object to him  
13 telling what they are going to do in this case. That is  
14 not the test.

15 THE COURT: Overruled.

16 MR. LEE: -- there will be  
17 evidence that is used even if the Defense doesn't produce  
18 anything.

19 If we produce some evidence that might  
20 be mitigating can you consider what that evidence -- you  
21 don't know what you are going to do but can you consider  
22 all the evidence in deciding?

23 THE POTENTIAL JUROR: Yes.

24 Q (BY MR. LEE) Many people feel like a young man  
25 of 18, 19, 20 years of age may be that ought to be

1 mitigating, other people, they are adults, they are grown  
2 and feel like it shouldn't be.

3 But can you at least listen to that  
4 evidence without saying what you would do but  
5 listen to it and make your decision based on that  
6 evidence?

7 A Yes.

8 Q Can you listen to family background, you know,  
9 that evidence and just kind of put it in the pot and  
10 decide whether as a total all the evidence that might be  
11 mitigating that you think is mitigating -- nobody can  
12 tell you what is "mitigating" and if it is and if you  
13 feel -- all that evidence comes -- maybe means  
14 that he's not quite as blameworthy, he's not quite as  
15 responsible as maybe -- or as bad enough to deserve  
16 the death penalty, can you consider all that  
17 evidence?

18 A Yes.

19 Q And be fair?

20 A Yes, sir.

21 MR. LEE: Pass the witness,  
22 Your Honor.

23 THE COURT: Mr. Old.

VOIR DIRE EXAMINATION

BY MR. OLD

MR. OLD: May I proceed, Your Honor?

THE COURT: You may.

MR. OLD: Mr. Alexander, I talked to you a little bit about my relationship with you or with your department, as a lawyer in the past with your family?

THE POTENTIAL JUROR: Yes.

Q (BY MR. OLD) Your wife's name is "Hope?"

A Yes, sir.

Q I think, and I'm not sure I represented another party in a lawsuit she was involved in, that would be with Brad?

A Oh, okay.

Q I mean if I -- if I recall it wasn't really a contested matter.

A Yes.

Q I consider Hope a nice person, if there was any animosity in that lawsuit I don't remember it.

What I'm asking you is this, if there was an -- and I don't think there was but sometimes we don't know as lawyers, would that carry over to this



1 trial either in you holding it against me or perhaps  
2 holding it against me or Mr. Wardlow?

3 A No.

4 Q I don't think I have ever tried a case where  
5 you were a witness or were perhaps -- even you were an  
6 investigating officer, if I have I don't recall it.

7 A I don't recall it either.

8 Q Have we ever gotten crossways and I didn't know  
9 it over police matters?

10 A Excuse me?

11 Q Have you and I ever gotten crossways over a  
12 police matter?

13 A No.

14 Q Okay.

15 A No. No.

16 Q I have been crossways with other people that  
17 you work with from time to time?

18 A No.

19 Q And I suspect it's probably been talked around  
20 and I mean what I want to know is I can't make anybody  
21 like me, I can't make anybody agree with me. What I want  
22 to know is if you have friends or associates that have  
23 a grudge, don't like me, whether it's for a particular  
24 reason or not.

25 A Yes.

1 Q Is that going to effect how you deliberate in  
2 this case?

3 A No.

4 Q Now, you work for the Government, do you not?

5 A Yes, sir.

6 Q And I'm not going to try to stretch things too  
7 far but the City of Mount Pleasant is a political  
8 subdivision of the State of Texas?

9 A It's a municipality. Yes.

10 Q But I mean a political subdivision of the  
11 State?

12 A Yes.

13 Q If you really get down to it you and Mr.  
14 Townsend, the prosecutor in this case, you all both work  
15 for the State or for Government?

16 A Well, I work for the municipality, you know,  
17 the City of Mount Pleasant.

18 Q You both work for Government?

19 A Yes. "For Government."

20 Q And you work with the prosecutor here which is  
21 Mr. Townsend's equivalent in this county?

22 A Yes.

23 Q He's your prosecutor as to felony cases?

24 A "Mr. Bailey?"

25 Q Yes.

1 A Do you relate to the State's side of the case  
2 in any case because of that?

3 A "Do I relate to it?"

4 Q Do you relate to it, are you pro-State?

5 I mean you all work together?

6 A Yes. We work together.

7 Q I mean -- and your prosecution -- prosecution  
8 does not necessarily result in punishment, I mean you are  
9 for active prosecution and good prosecution?

10 A Yes, sir.

11 Q And I mean you are in fact a member of -- in  
12 this county and perhaps in other counties, too, because  
13 your work can have effect in other counties, you are part  
14 of the prosecution team when you investigate something  
15 and you become the investigating officer you have a  
16 direct relationship with prosecution and you aid  
17 prosecution?

18 A Yes, sir.

19 Q I mean that's -- you are trained to do that and  
20 that's your job, you are an adversary along with the  
21 District Attorney, an adversary of that, true?

22 A Yes.

23 Q Is that going to tilt your view of the evidence  
24 to the prosecution, of the State's side of this case?

25 A No.

1 Q I am not saying that you would intentionally.

2 A No.

3 Q Objectively say, "Hey, I don't care what  
4 happens, I'm for the State" but subjectively are you  
5 going to view -- and you told them as a peace officer you  
6 would view him as any other witness, you would give him  
7 more credibility merely because he was a peace officer?

8 A Yes.

9 Q I don't think you would objectively, I don't  
10 think you would but subjectively you really can't control  
11 -- are you going to favor the officer's testimony more  
12 than a non-officer witness?

13 A No. I wouldn't.

14 Q Do you agree it's a possibility that could  
15 happen?

16 A I wouldn't --

17 Q I'm not saying that you would intentionally do  
18 it nor am I implying it, you see, what I'm asking you  
19 relates to other officers.

20 A What do you mean "relates?"

21 Q Well, you stand in the same position -- let me  
22 give you an example; when the Defense or when Mr. Hinson  
23 and myself, there is an officer on the stand, you know,  
24 we are going to -- if we have the means to do it we are  
25 going to try to discredit him?

1 A Sure.

2 Q But that's fair?

3 A That's your job?

4 Q You agree it's fair and I have the right to  
5 discredit his testimony?

6 A Yes.

7 Q When I start doing that are you going to get  
8 defensive for that officer?

9 A No.

10 Q I mean you are not going to relate to him or  
11 have sympathy for him and say I am going -- I am leaning  
12 his way?

13 A No. I wouldn't.

14 Q Let me ask you something.

15 A Yes.

16 Q So far as giving a witness a head start, Mr.  
17 Townsend asked the question the other day, he used the  
18 analogy of witnesses all on the starting line when they  
19 get on the witness stand and let's say in lane one  
20 getting ready to start the race for credibility of  
21 evidence is a peace officer?

22 A Yes.

23 Q In lane two is the defendant's mother, just an  
24 ordinary person, she is going to testify to facts the  
25 peace officer is going to be testifying to facts?

1 A Yes.

2 Q Are you more likely to believe the peace  
3 officer than the mother?

4 A No.

5 Q On the same issue let's say the peace officer,  
6 the witness gets on the stand, I am a peace officer and  
7 "The color of the car was black", the mother gets on the  
8 stand, I am a mother, I am the defendant's mother and  
9 "The car was green", are you going to take into  
10 consideration the fact that the witness was a peace  
11 officer in judging the credibility? Are you going to  
12 lean in that situation just because he's a peace officer  
13 to him?

14 A No.

15 Q I am -- on your questionnaire as to the first  
16 page?

17 A Yes.

18 Q Do you have it in front of you?

19 THE COURT: I think I have his  
20 questionnaire.

21 MR. OLD: Was the City of  
22 Mount Pleasant your first police job?

23 THE POTENTIAL JUROR: Yes.  
24 It was.

25 Q (BY MR. OLD) Did you do an internship anywhere

1 prior to --

2 A No.

3 Q What is your training, your background as a  
4 peace officer?

5 How did you get your training?

6 A Went through Kilgore College Police Academy.

7 Q How far did you go, what certificate do you  
8 hold?

9 A Hold a Basic.

10 Q You came to work in Mount Pleasant as a  
11 patrolman?

12 A Yes, sir.

13 Q How long have you been here in Mount Pleasant  
14 as a patrolman?

15 A Since January 12th, 1990.

16 Q Patrolman -- is it a fair statement, the  
17 department you work for has been reorganized in the last  
18 year?

19 A That's pretty fair.

20 Q Do you work anything other than traffic?

21 A Yeah.

22 Q I mean you go to the scene of crimes?

23 A Yes, sir.

24 Q If you all get a call somebody has been shot  
25 or injured in the City of Mount Pleasant by violence you

1 answer those calls?

2 A Yes, sir.

3 Q You fill out reports?

4 A Yes, sir.

5 Q And to some extent you do investigate?

6 A Yes, sir. To some extent.

7 Q You take it and gather everything you can and  
8 you turn it over to you all's CID, is that correct?

9 A "Investigator."

10 Q Turn it over to the investigator?

11 A Yes, sir.

12 Q You have been trained to some extent in  
13 investigation?

14 A Yes, sir.

15 Q Did you take an oath when you went to work for  
16 the City of Mount Pleasant as an officer?

17 A Yes. I did.

18 Q Do you think that you are sworn to uphold the  
19 State of Texas -- the United States of America, the State  
20 of Texas and maybe the City of Mount Pleasant?

21 A Yes.

22 Q On your questionnaire on Page 1 you answer,  
23 yes, that you favor the death penalty for capital murder?

24 A Yes.

25 Q The next sentence you were asked to explain and



1       you state "I believe in the laws of the State of Texas,  
2       if Texas statutes dictate -- if Texas statutes dictate  
3       I believe in some circumstances it should be carried  
4       out."

5                       That is in reference to the death  
6       penalty?

7       A               Yes.

8       Q               Okay. Are you -- I mean I want to understand  
9       your answer that -- are you saying because you are sworn  
10      to uphold the law plus believe in capital punishment?

11      A               No.

12      Q               What do you mean by "dictate?"

13      A               What I mean is what the laws dictate.

14      Q               Yes.

15      A               I believe in the law and it should be, you  
16      know, follow the law is what I'm saying.

17      Q               Are you saying you really don't have a personal  
18      opinion, you have something that you let the law decide  
19      for you?

20      A               As far as capital murder?

21                       No.

22      Q               Let me go on down, you circled "Number 2?"

23      A               Yes.

24      Q               And what you say is you believe it, being the  
25      death penalty, is appropriate in some murder cases and

1       you could return in the proper case, return a verdict of  
2       death?

3       A           Yes.

4       Q           And then down below "Number 6" you really state  
5       after you state some murder cases you think a life  
6       sentence is appropriate?

7       A           Some cases. Yes.

8       Q           That question is directed at murder and as Mr.  
9       Lee pointed out murder covers a lot of territory?

10      A           Yes, sir.

11      Q           It covers from that five year probated he asked  
12      you about that you said you could consider?

13      A           Yes.

14      Q           And it goes all the way to death.

15                   Now, I want to narrow that question down  
16      as to capital murder and capital murder in this case and  
17      the law that makes -- that the State is relying on is the  
18      intentionally killing someone while in the course of  
19      committing a robbery and attempting to commit a robbery  
20      I believe is the way -- did you read it?

21      A           No. I didn't.

22      Q           Do you want to take a second and read it?

23      A           Okay.

24      Q           Okay. What does that say to you so far as what  
25      law has been violated?

1 A That says that he has been charged with murder.

2 Q "Murder" or "capital murder?"

3 A "Capital murder."

4 Q Okay. And the law that is charged there is the  
5 intentionally causing the death of a person?

6 A Yes.

7 Q In the course of committing and attempting to  
8 commit the offense of robbery of that person?

9 A Yes, sir.

10 Q So I mean, you know, that if someone kills you  
11 while you are on duty that could be capital murder?

12 A Yes.

13 Q But that's not the law of this case.

14 A Yes.

15 Q No one is alleging that. You know, the State  
16 must prove its allegation?

17 A Yes, sir.

18 Q Do you agree with me that if they prove to you  
19 that the Defendant did in fact kill Mr. Cole with a  
20 firearm and that proof turned out he wasn't in the course  
21 of committing a robbery, he was in the course of  
22 committing an arson, which two is capital murder but  
23 that's not what this indictment says, if you found the  
24 evidence showed that, that the offense giving rise to the  
25 elevation of capital murder was in fact arson and not

1 robbery would you find the Defendant not guilty of  
2 capital murder?

3 My question is this; you believe the  
4 State did not prove to you beyond a reasonable doubt?

5 A That he was committing a robbery?

6 Q A robbery but you are sitting there saying no,  
7 in my mind beyond a reasonable doubt he was in the course  
8 of committing an arson, could you find him not guilty of  
9 capital murder?

10 A Yes.

11 Q What?

12 A I don't -- what you are saying is he didn't  
13 commit a robbery that he was charged with?

14 Q You are sitting there saying in the jury room,  
15 saying "It's arson, it wasn't robbery, there's no doubt  
16 in my mind about it. I don't even have -- you know, it  
17 wasn't even close to robbery, he was committing arson,  
18 not robbery."

19 Could you return a verdict of not  
20 guilty?

21 A Yes.

22 Q Would it be hard for you to do?

23 A What?

24 Q Would it be hard for you to do that?

25 A No. He wouldn't be guilty with what he's

1 charged with.

2 Q I mean you could say not guilty by your  
3 verdict?

4 A Yes.

5 Q Let me ask you another question.

6 A Yes.

7 Q You know the indictment alleges that the  
8 alleged offense occurred in Morris County, Texas?

9 A Yes.

10 Q This case has been transferred here from Morris  
11 County, Texas.

12 Let's say you believed that the  
13 defendant did intentionally kill somebody while in the  
14 course and committing the offense of robbery but they  
15 didn't prove to you that it was in Morris County, he was  
16 never asked where was he, there was no evidence to you  
17 of where this happened, could you find the defendant not  
18 guilty?

19 A That they proved -- they proved it happened but  
20 they didn't prove where?

21 Q They proved that it happened, they didn't prove  
22 where, there is no evidence to where you can say beyond  
23 a reasonable doubt I believe this occurred in Morris  
24 County, Texas?

25 A I don't -- I'm not following you.

1 Q I mean they proved everything else to you,  
2 every other element of the offense.

3 A Yes.

4 Q But I mean you aren't arguing with yourself  
5 about what the evidence is, you are sitting there saying,  
6 you know, the charge says they must prove each and every  
7 element of the offense beyond a reasonable doubt?

8 A Yes.

9 Q In Morris County it happened, there is an  
10 element of the offense and they didn't prove it?

11 A All right.

12 Q They proved that murder happened, I believe  
13 this and everything else but I don't have any evidence  
14 to prove to me beyond a reasonable doubt that this crime  
15 occurred in Morris County.

16 A Okay.

17 Q Can you write a verdict of not guilty?

18 A I could.

19 Q What?

20 A I could.

21 Q You could?

22 A Yes.

23 Q Would that be hard for you to?

24 A It would be tough.

25 Q Do you have a hard time following the law in

1       this case?

2       A           Well, --

3       Q           I am not -- I'm not trying --

4       A           Yes.

5       Q           You can or you can't?

6       A           Yes. Yes.

7       Q           It would be hard?

8       A           It would be hard.

9                   THE COURT: Could you do it?

10                  THE POTENTIAL JUROR: I could.

11                  THE COURT: Could you do it?

12                  THE POTENTIAL JUROR: Yes,  
13       sir. I mean if all they know is they had a murder but  
14       they don't know where it occurred --

15                  MR. OLD: Let me go to -- you  
16       have been schooled in how to take a confession?

17                  THE POTENTIAL JUROR: Yes,  
18       sir.

19       Q           (BY MR. OLD) Mirandaizing the suspect while  
20       he's in custody?

21       A           Yes.

22       Q           I don't know how you study -- do you all study  
23       in school, you have been to seminars and things since you  
24       got out of Kilgore, haven't you?

25       A           Yes, sir.

1 Q Is that a subject that you had more than one  
2 class on or maybe classes, seminars?

3 A I have had classes on it.

4 Q Let's say, you know what the Court's charge is?

5 A "The course of charge?"

6 Q "The Court's charge", the written instruction  
7 that the jury gets at the conclusion of evidence?

8 A Yes.

9 Q You understand that His Honor is the exclusive  
10 judge of the law, he will tell us what the law is and  
11 what law to apply to this case.

12 Now, you as a juror is the exclusive  
13 judge of what facts are proved or of the evidence?

14 A Yes.

15 Q And what weight to be given?

16 Let's say in this charge the issue of  
17 whether a confession was voluntary or not was raised by  
18 the evidence, which would mean the Court would then  
19 charge you on the requirement of the statement being  
20 voluntary and you as a juror would have to make a fact  
21 finding as to whether or not it was voluntary?

22 A Yes.

23 Q And basically the Court would instruct you that  
24 in order for a confession or a statement of the defendant  
25 made while in custody and the question being submitted



1 to you, custodial interrogation, that first it was made  
2 without compulsion or persuasion, nobody beat him up,  
3 nobody kept him up 48 hours, played him rock-and-roll  
4 records until he said whatever then it would have to be  
5 proven that he was given his Miranda Warnings at the time  
6 required.

7 Now, if you found the statement was  
8 involuntary, you know, the State has to prove to you  
9 beyond a reasonable doubt that the statement was  
10 voluntary?

11 A Yes.

12 Q And let's just say what the evidence was, the  
13 officer taking the statement testified, "Well, I told him  
14 all of his Miranda Rights except I forgot to tell him he  
15 was entitled to stop interrogation and get himself a  
16 lawyer, I just flat forgot to tell him."

17 That would make it involuntary, you  
18 would have to find it involuntary simply because those  
19 words were not spoken?

20 A Yes, sir.

21 Q No issue about it?

22 A That's right.

23 Q But you believe that the confession to be true,  
24 I mean whether it was voluntary, involuntary, you sat  
25 there and said, you know, it's already been introduced

1 in evidence, you have read it, you know what it says and  
2 you said "No doubt about it in my mind, that is a true  
3 statement. I believe it."

4 Okay. And in the course of the  
5 instructions, written instructions it said to you as a  
6 juror, "Unless you so find" and that is the statement  
7 being voluntary -- "Or if you have a reasonable doubt  
8 thereof you will not consider the statement or confession  
9 for any purpose whatsoever or any evidence obtained as  
10 a result of the statement", referring back to the  
11 statement?

12 A Yes.

13 Q Okay. Now, let me be sure; you are a juror in  
14 that situation, you believe the statement was  
15 involuntary, no question about it?

16 A Yes.

17 Q But you believe the truth of the matter in the  
18 statement beyond a reasonable doubt; can you follow that  
19 charge, instruction and can you not consider the  
20 statement or confession for any purpose?

21 A Yes. I could.

22 Q You could?

23 A Yes.

24 Q Would that be hard to do?

25 A No.

1 Q I mean you would sit there it's horrible, it  
2 describes a horrible crime and you believe it to be true?

3 A Yes.

4 Q But can you exclude that evidence just because  
5 you find it to be involuntary because the officer did  
6 not --

7 A Yes. I could.

8 Q -- did not tell him he had the right to have  
9 a lawyer?

10 A Yes, sir.

11 Q You can set it aside and not consider it?

12 A Yes.

13 Q Going back to the Witness List; you indicated  
14 that you knew Vernon Cope?

15 A I don't know him, I have met him.

16 Q Well, just -- you know him because some other  
17 officer has talked about it or talked to him on the  
18 radio?

19 A Never talked to him. Where -- if I met him was  
20 we was in a gun shop, that's where I met him.

21 Q Anything in your knowledge of him that would  
22 make you consider him to be more credible not simply  
23 because he was a peace officer but because you met him?

24 A No.

25 Q Trooper David McFarland, how well acquainted

1 are you with him?

2 A Not real well. I have seen him around the  
3 Sheriff's Office. That's about it.

4 Q Sheriff's Office here in Morris County?

5 A Seen him over here, like I would be going out  
6 and he would be coming in, you know.

7 Q Nothing in that relationship that would effect  
8 you as a juror?

9 A No.

10 Q Harry Washington? Harry worked for the City  
11 of Mount Pleasant at one time, didn't he?

12 A Yes.

13 Q Was that before you worked for them?

14 A Well, he came to work before I did but I did  
15 work with him.

16 Q You all worked together for some period of  
17 time?

18 A I don't remember how long, probably about a  
19 year.

20 Q Okay. I mean you know Harry?

21 A Yes.

22 Q Did you all patrol together?

23 A Some.

24 Q Work the same shift?

25 A Sometimes.

1 Q On occasions?

2 A On occasions. Yes.

3 Q Did you all socialize together outside of  
4 police functions or Christmas parties, whatever you all  
5 have?

6 A No. We didn't socialize together.

7 Q All right. Anything in your relationship with  
8 Mr. Washington that could effect your deliberations in  
9 this matter?

10 And specifically would your formal  
11 knowledge of him effect the way you weighed his evidence?

12 A No.

13 Q I mean you wouldn't consider him more credible  
14 or less credible based upon your and his -- your prior  
15 knowledge of him?

16 A No.

17 Q I am not -- I think Mr. Lee started asking you  
18 another question while you were still on Page 2 of the  
19 list, let me get you to go over it.

20 There are some names on there from out  
21 of state?

22 A Yes.

23 Q There's some -- just go down and tell me if you  
24 know any of them and the ones I pointed out to you, there  
25 is some people on there from Pittsburg and I understand

1 correctly you grew up in Pittsburg or at least lived  
2 there for some time?

3 A I lived there for a little while.

4 Q Do your parents still live over there?

5 A Yes.

6 THE COURT: Twenty-two  
7 minutes.

8 MR. OLD: Thank you.

9 Do you know Mr. Ragsdale, he's got a  
10 Pittsburg address?

11 THE POTENTIAL JUROR: No. I  
12 don't.

13 Q (BY MR. OLD) Dorothy Marie Smith?

14 A No. I don't.

15 Q Fred Cook, and I believe he's an officer with  
16 the Pittsburg Police Department, he may be with the  
17 Sheriff's Department. I don't remember.

18 A I have met Fred.

19 Q Well, can you tell me the extent of meeting  
20 him?

21 A He -- most I remember, he came over one night  
22 at the police department he was off, maybe and that's  
23 about all. I met him.

24 Q Did not come over there specifically to see you  
25 or see about business?

1 A No. He was singing at the opera that night.

2 Q "Singing at the opera that night?"

3 A I think is what he was doing.

4 "Dewayne McClung."

5 Q Excuse me?

6 A "Dewayne McClung", awhile ago you forgot that.

7 Q "Dewayne McClung?"

8 A Yes.

9 Q Dewayne is from Mount Pleasant originally, that  
10 may not mean anything.

11 A That's before my time.

12 Q How well do you know Dewayne?

13 A I have met him, talked to him on several  
14 occasions.

15 He used to come up to the police  
16 department all the time.

17 Q Okay. Anything in your relationship with Mr.  
18 McClung or Cook or any of the officers that we have  
19 talked about that might could or would influence your  
20 verdict in this case?

21 A No.

22 Q I mean they don't have a head start with you  
23 as witnesses over non-officer witnesses?

24 A No.

25 Q As to Special Issue #1, you were looking at it

1 a minute ago?

2 A Yes.

3 Q There is a -- first there's a definition of  
4 reasonable doubt laying up there by you, it's on a long  
5 typed page.

6 THE COURT: To your left.  
7 (Indicating)

8 THE POTENTIAL JUROR: There  
9 it is. (Indicating)

10 MR. OLD: Could I get you to  
11 look over that page and I believe it starts off the  
12 second paragraph -- (Indicating)

13 THE POTENTIAL JUROR: Okay.

14 Q (BY MR. OLD) Prior to coming here today did  
15 you have your own definition of reasonable doubt or in  
16 your mind what it meant?

17 A Yes, sir.

18 Q I mean it could be but I seriously doubt if you  
19 had written me out a definition in your own words it  
20 would have been the words used in there?

21 A No. It wouldn't.

22 Q Is what you required in your own definition of  
23 reasonable doubt a greater or lesser burden of proof?

24 A Probably greater.

25 Q About the same?



1 A Yeah.

2 Q I'm not asking you if you know, that's your  
3 definition, but your definition is not in contradiction  
4 to the one that you just read?

5 A No.

6 Q You would have no problem laying aside your own  
7 definition of reasonable doubt and deliberating in this  
8 case in making your findings by the Court's definition?

9 A Yes. I would use the Court's definition.

10 Q Go back to Special Issue #1 and it reads,  
11 starts off, "Do you find from the evidence beyond a  
12 reasonable doubt" and we just -- read reasonable doubt.

13 A Yes.

14 Q So that is the standard you have to answer this  
15 question by then the question is do you find that there  
16 is a probability that the defendant would commit criminal  
17 acts of violence that would constitute a continuing  
18 threat to society.

19 What does the word "probability" mean  
20 to you?

21 A "Probability?"

22 Q Yes.

23 A It means that it's probably to happen again,  
24 you know.

25 Q Would -- I will suggest some words and you are

1 not obligated to agree with them.

2 A Okay.

3 Q "More likely than not?"

4 A No.

5 Q That doesn't mean -- is your definition of  
6 "probability" just that it's "possible?"

7 A "Possible."

8 Q And the way you would answer that question is,  
9 "Do you find from beyond a reasonable doubt that there  
10 is a possibility that the defendant would commit criminal  
11 acts of violence that would constitute a continuing  
12 threat to society?"

13 A Yeah.

14 Q Okay. I mean you are -- what you are looking  
15 at there is "possibilities?"

16 A Yes.

17 Q Not a preponderance of evidence, just a  
18 possibility, just that it could happen?

19 A It could or could not.

20 Q The evidence would have to indicate to you that  
21 there was not any possibility that the defendant would  
22 commit any criminal act of violence?

23 A No.

24 Q What?

25 A What are you saying?

1 Q Okay. Okay. You have told me that  
2 "probability" means that it can happen?

3 A "It can happen."

4 Q Just one in one thousand chances?

5 A Yes.

6 Q Is that fair?

7 A Yes.

8 Q One in a million?

9 A Whatever.

10 Q Just one chance in ever how many we add them  
11 up to, correct?

12 A Yes.

13 Q And as long as there existed any chance that  
14 the defendant would commit criminal acts of violence that  
15 would constitute a threat to society you would answer  
16 that question "Yes?"

17 A Yes.

18 Q You would say, "There is a chance?"

19 A If I felt there was a chance.

20 Q Now, do you understand the double question,  
21 first the evidence that the State proves must be beyond  
22 a reasonable doubt?

23 A Yes.

24 Q But then as you say they must prove to you that  
25 any chance exists?

1 A Yes.

2 Q In answering that question the fact you know,  
3 you have already found someone guilty of capital murder,  
4 if you answer that question -- the question doesn't get  
5 asked until after you find someone guilty?

6 A Yes.

7 Q If in fact you found someone has committed a  
8 crime of capital murder is there any way you could answer  
9 that question "No?"

10 A Yes, sir.

11 Q Okay. I mean just simply because somebody had  
12 committed a capital crime you would not automatically  
13 answer it "No", automatically answer it "Yes?"

14 A Yes.

15 Q Would you automatically answer it "Yes?"

16 A No.

17 Q Just on the fact that you convicted them of it,  
18 found beyond a reasonable doubt that they committed  
19 capital murder?

20 A No. I wouldn't.

21 Q You would listen to the rest of the evidence?

22 A Yes, sir.

23 Q To determine whether or not there was any  
24 chance that they would commit another act of violence?

25 A Yes.

1 Q You indicated that you had been interested in  
2 the Billy Joe Brown murder?

3 A I was involved in it.

4 Q Were you interested or did you work on that  
5 case?

6 A I worked on that case.

7 Q Were you --

8 A I was the first officer on the scene.

9 Q Okay. To the extent the first knowledge of  
10 that case was yours it was your case?

11 A Well, I wasn't the investigator on it.

12 Q I know. But I mean you handled the scene of  
13 the crime until the investigator got there?

14 A Until they arrived.

15 Q And I presume you kept up with that case and  
16 were interested -- I'm not saying you wouldn't be  
17 interested in any case but maybe a little more interested  
18 in this case because of your involvement in being the  
19 first officer there?

20 A I -- yes, sir.

21 Q Did you testify in that case?

22 A Yes.

23 Q That was tried as a capital murder case and the  
24 defendant was found guilty of murder but not capital  
25 murder?

1 A Yes.

2 Q And you well understood that murder is a lesser  
3 included offense of capital murder?

4 A Yes.

5 Q Or can be based on the facts proven?

6 A Yes.

7 Q All the State has to prove, you have got it,  
8 beyond a reasonable doubt is intentionally and knowingly  
9 killing someone?

10 A Yes.

11 Q I'm not asking you what the law is, I'm asking  
12 you what your opinion is and I guess I'm asking you if  
13 you were the person who wrote the laws would plain murder  
14 or non-capital murder be punishable by a maximum penalty  
15 of the death penalty?

16 A Plain murder?

17 Q If you were the person writing the laws?

18 A No.

19 Q I mean it would not intentionally and knowingly  
20 killing someone would not be a punishment by death if you  
21 were "King for a Day?"

22 A No. It wouldn't.

23 Q But be punishable by any worse punishment than  
24 death?

25 A No.

1 Q You were asked about the rules of parole, you  
2 know you can't consider that --

3 A Yes, sir.

4 Q -- in reaching a verdict either for non-capital  
5 murder or capital murder. What you are instructed to do  
6 by the charge is you have got to consider life life, you  
7 have got to consider a number of years as that number of  
8 years, you aren't to sit around and say, "Well, they will  
9 let him out of Huntsville in six months if we just give  
10 him 10 years?"

11 A Yes.

12 Q Okay. Do you have -- I mean do you have  
13 criticism of the Texas parole rules?

14 A No.

15 Q You don't? You think they are fine?

16 A Yeah.

17 Q Have there been people that you thought were  
18 paroled too early?

19 A Probably.

20 Q Okay. I agree there are people that I thought  
21 were paroled too early.

22 A Yes.

23 Q My question is this; can you lay aside that  
24 feeling and say, "No, we aren't going to figure out when  
25 he's going to parole, 60 years is how we want to punish

1 him, we are going to write down 60 years?"

2 A Yes.

3 Q And if we want to give him life we're going to  
4 give him life but we are not going to go back and look  
5 and see when he's eligible for parole?

6 A Yes.

7 Q And you do understand just because someone  
8 becomes eligible for parole at some point doesn't mean  
9 they get a parole?

10 A Yes.

11 Q To guess what would happen 15 years from now  
12 would not be fair?

13 A No.

14 Q We don't know. You might have the suspicion  
15 of what might happen next month but 15 years from now it  
16 wouldn't be fair to anybody to guess, you would strictly  
17 be speculating?

18 A Yes.

19 Q And not -- in trying to figure out how long the  
20 minimum time you are going to lock somebody up would you  
21 speculate, you would just write down the number of years  
22 you wanted to give and let the law take care of it?

23 A Yes.

24 Q You served on a civil jury, do you remember  
25 the --



1 A Yes.

2 Q -- do you remember the name of the case?

3 A No. I don't.

4 Q What kind of case was it other than "civil?"

5 A Personal injury.

6 Q Do you remember who the lawyers were?

7 A No. One out of Pittsburg I believe.

8 Q Okay.

9 A I think.

10 Q Do you remember whether or not you gave them  
11 any money, if you ever knew?

12 A We gave them a little bit.

13 Q Did you enjoy your jury service?

14 A Well, --

15 Q After hindsight, I'm not saying you enjoyed it  
16 but was it an experience that you were glad you had?

17 A Yes.

18 Q Okay. You checked you knew nothing of this  
19 case -- or let me ask you; do you know anything or heard  
20 anything about the facts of this case?

21 A No.

22 Q Read anything in the newspaper?

23 A No.

24 The only thing I will say I know about  
25 this case, I don't know it -- the only thing I remember

1       about this case, we got a teletype from Morris County,  
2       "Look out for some type of pickup", I don't know what it  
3       was.

4       Q           Did you patrol looking for that truck?

5       A           While I was out I keep an eye out for it.

6       Q           But that became part of your duties that day?

7       A           To watch for this pickup.

8       Q           Did you --

9       A           I don't know what kind of pickup it was.

10      Q           -- did you stop anybody pursuing that?

11      A           No.

12      Q           But I mean to the extent that you watched for  
13      the truck you did aid in the investigation in this case?

14                   That is to say you looked for the truck?

15      A           I watched for it.

16      Q           Do you know anything about the facts of the  
17      arrest in this case?

18      A           No.

19      Q           When it was, where it was, who made it?

20      A           No.

21      Q           Have you -- I mean I'm not asking you, I say,  
22      know -- I know -- has anyone told you anything about it?

23      A           No.

24      Q           Anyone told you how the crime was committed?

25      A           No.

1 Q Are you telling me, "No, they haven't" or "No,  
2 that you know that you know that you don't recall anybody  
3 mentioning it?"

4 A I don't recall anyone mentioning anything about  
5 it.

6 THE COURT: Six minutes  
7 remaining.

8 MR. OLD: Thank you.

9 As to Special Issue #2, I'm probably  
10 going to read part of it to you but I need to read it to  
11 understand my own question.

12 THE POTENTIAL JUROR: Okay.

13 Q (BY MR. OLD) Mitigating evidence is evidence  
14 that might reduce the moral blameworthiness of the  
15 accused or the defendant, okay, it does not excuse his  
16 conduct but it might make you believe that because of the  
17 evidence that a life sentence is more appropriate than  
18 death.

19 Now, in determining mitigating evidence,  
20 and I'm not asking you how you would rule on certain  
21 evidence, I think you were asked something by the State  
22 about age, I'm not asking you to tell me if the person  
23 is 20 years six months old you would give them a plus  
24 three on mitigation, that's not what I'm asking. What  
25 I'm asking you is this; would you at least consider the

1 evidence, I mean you could still reach an answer of "Yes"  
2 or "No" but would you consider evidence of age, religion,  
3 someone's background and education?

4 A Yes, sir.

5 Q Would you consider psychiatric testimony?

6 A Yes, sir.

7 Q You have any problems with psychiatrists?

8 A No.

9 Q You consider them to be of value to society?

10 A Yes.

11 Q So those things I have asked you about, there's  
12 nothing you would tell me, "I don't care whether you  
13 proved to me he was one year old or 99 years old, I'm not  
14 going to consider age period."

15 There's nothing that you could think of  
16 that you could do that to?

17 A No.

18 Q You would listen to the evidence?

19 A Yes, sir.

20 Q And make your decision as to "Yes" or "No" on  
21 the evidence?

22 A Yes.

23 MR. OLD: Your Honor, we would  
24 pass the witness.

25 THE COURT: Sir, if you

1 will --

2 MR. LEE: He's a "juror", he's  
3 not a "witness."

4 THE COURT: Sir, if you will  
5 step out for a moment, we will discuss your service and  
6 bring you back in a moment and talk to you a little  
7 further.

8 THE POTENTIAL JUROR: All  
9 right.

10  
11 (The following occurred outside the  
12 presence and hearing of the potential juror:)

13  
14 THE COURT: State have any  
15 challenges?

16 MR. LEE: No challenges.

17 THE COURT: Mr. Old, do you  
18 have any challenges?

19 MR. OLD: Yes, Your Honor.  
20 We have two.

21 The witness testified as to the Special  
22 Issue #1 which he's referring to that "probability" means  
23 "any chance", the Court read into the record earlier  
24 today the Supreme Court requirement that --

25 THE COURT: I believe that was

1 "Court of Criminal Appeals."

2 MR. OLD: Court of Criminal  
3 Appeals that "probability" meant "more likely than not."

4 Also it suggests that "probability"  
5 means the exact same thing as "preponderance of the  
6 evidence, more likely than not."

7 He first indicated that the proof  
8 required would have to be that there was no chance of  
9 that the defendant would commit the acts in question in  
10 order for him to answer it.

11 Additionally, we would object to the  
12 witness and challenge him for cause in that he testified  
13 that to some extent he participated in the investigation  
14 of the offense charged. And that was his testimony about  
15 while on patrol he had the truck identified to him and  
16 he was looking for it.

17 And he is a potential witness in this  
18 case.

19 MR. LEE: Your Honor, in  
20 response?

21 THE COURT: You may.

22 MR. LEE: We would like to  
23 point out that he has testified to him that  
24 "probability", he also said he would go along with the  
25 Court's charge and if the Defense wants to request in the

1 charge a definition along the lines the Court cited we  
2 wouldn't object to it. And the definition was to him  
3 what probability means so I think that's just a question  
4 of interpretation.

5 THE COURT: Well, Mr. Lee, and  
6 Mr. Old, assuming that we did not have the Court case  
7 that I now have we would have a question as to whether  
8 or not that meant a legal requirement of probability but  
9 now since we now have a definition or at least a  
10 guideline on what the burden of proof is I think before  
11 anyone can be disqualified they have to be told what the  
12 law is and then be asked whether or not they can follow  
13 the law.

14 If he says his definition of probability  
15 is still just a mere chance then he would be disqualified  
16 but without telling a juror what the law is and giving  
17 him or her a chance to say "Yes" or "No", I don't think  
18 we reached the disqualification stage.

19 I'm going to bring him back and read  
20 that definition and if he says that he can follow the law  
21 I'm going to overrule the challenge, if he says he  
22 cannot, challenge him and if he does end up on the jury  
23 I will feel compelled to include that instruction in the  
24 charge.

25 MR. OLD: That is the reason

1 I did not tell him the law is this.

2 THE COURT: Right. Because  
3 I told you I wasn't sure what I was going to do.

4 MR. OLD: You told me that you  
5 didn't think it was appropriate to charge it and for me  
6 to imply that the law -- and sit here and tell him other  
7 things in the charge that we know are going to be here  
8 they actually go to my credibility during deliberation  
9 or say, "Well, Old was wrong, it meant what I thought it  
10 meant."

11 That is why I did not approach it that  
12 way and if it's the Court's charge I will approach it  
13 that way.

14 THE COURT: Based on this  
15 man's answer, based on his answer I believe at this point  
16 it would be appropriate for this definition or  
17 instruction to be included in the charge so I intend to  
18 read it to him.

19 You actually gave me back a minute or  
20 two, I will let you read it to him if you feel like I  
21 mislead him by not letting you do it.

22 MR. OLD: No, Your Honor. As  
23 long as he -- I may -- I may want to take him after you  
24 ask him.

25 THE COURT: We'll see what he



1       says.

2                       What I'm worried about more so is this  
3       potential witness probability.

4                       He's not on the Witness List so he's not  
5       going to be called by the State?

6                       MR. TOWNSEND: No. He would  
7       not be called by the State, Your Honor, the only  
8       knowledge he has is what you heard him say, he can't  
9       remember.

10                      THE COURT: He doesn't even  
11       remember.

12                      MR. TOWNSEND: He doesn't  
13       remember the vehicle.

14                      MR. OLD: There's other people  
15       that can call witnesses in this case, that being the  
16       Defendant. I'm not going to sit here and tell you that  
17       I expect to call this man as a witness. I can see a  
18       possibility of one in some chance that I might want to  
19       prove they looked for the truck at a certain time in  
20       Texas and it wasn't here.

21                      MR. LEE: I would point out  
22       on that that would effectively in any criminal case  
23       exclude any peace officer which the law is clearly not  
24       the case because any peace officer has daily reports as  
25       to what goes on in the area.

1 THE COURT: I'm going to bring  
2 him back in, read the law to him, see if he can follow  
3 the law.

4 I'm going to ask him a couple more  
5 questions about his participation then I'm going to take  
6 under advisement the challenge or participation and I  
7 will not rule on that challenge until Monday.

8 Bring in Mr. Alexander.

9  
10 (Off the record discussion.)

11  
12 (The following occurred in the presence  
13 and hearing of the potential juror:)

14  
15 THE COURT: Have a couple of  
16 questions for you.

17 THE POTENTIAL JUROR: Okay.

18 THE COURT: Let's go back to  
19 your definition of "probability", I think a mathematical  
20 definition of probability is basically "In a chance if  
21 it can happen there's a probability that it's going to  
22 happen."

23 Until about a year or so ago the courts  
24 didn't really give us any guideline of "probability" but  
25 a case came out in January of last year, '93 that stated

1 that the burden of proof on punishment question one, that  
2 the Special Issue #1, requires the State to prove that  
3 the defendant will more likely than not commit criminal  
4 acts of violence in the future so as to constitute a  
5 continuing threat to society so the law, they haven't  
6 really given us a definition but in essence they have,  
7 they have said that "Probability means more likely than  
8 not, not a mere chance, not a hundred percent more likely  
9 than not."

10 If this instruction is in the Court's  
11 charge will you be able to follow that instruction and  
12 disregard your personal definition of "probability" and  
13 apply the Court's definition of "more likely than not"  
14 before you answer that question "Yes?"

15 THE POTENTIAL JUROR: Yes,  
16 sir.

17 THE COURT: So what I was  
18 asking you to do is can you assure the Court that you  
19 would not answer that question "Yes" unless the State  
20 proved beyond a reasonable doubt that it was more likely  
21 than not that this defendant would commit criminal acts  
22 of violence in the future?

23 THE POTENTIAL JUROR: Yes.

24 THE COURT: Let's talk a  
25 little more about your participation in this alleged

1 offense; did you receive a radio call stating that there  
2 had been a murder, a killing, a missing truck, a stolen  
3 truck?

4 What alerted you to the fact that you  
5 were to look for a truck?

6 THE POTENTIAL JUROR: We  
7 received teletype from over the computer.

8 THE COURT: Where were you?

9 THE POTENTIAL JUROR: I just  
10 come to work.

11 THE COURT: Do you have a  
12 computer in the patrol car?

13 THE POTENTIAL JUROR: No. It  
14 was I believe during briefing that day that they brought  
15 it out to us.

16 THE COURT: Do you recall  
17 whether the name -- were you told what the suspected  
18 offense was or just to look for a truck?

19 THE POTENTIAL JUROR: I  
20 believe I was told what the suspected offense was also.

21 THE COURT: So you believe you  
22 were told that it looked like a murder has been committed  
23 and truck was missing?

24 THE POTENTIAL JUROR: I  
25 believe so. The best I remember.

1 THE COURT: Do you recall the  
2 description of the truck?

3 THE POTENTIAL JUROR: No. I  
4 don't.

5 THE COURT: Do you recall the  
6 year?

7 THE POTENTIAL JUROR: No.

8 THE COURT: Did you recognize  
9 the name of the deceased when you got the teletype or the  
10 instruction to look for a pickup?

11 THE POTENTIAL JUROR: No.

12 THE COURT: Do you recall  
13 whether the name was even given to you that day?

14 THE POTENTIAL JUROR: I don't  
15 recall whether it was or not.

16 THE COURT: Did you look for  
17 that truck more than just that first day or only that  
18 first day?

19 THE POTENTIAL JUROR: Best I  
20 can remember only that day.

21 THE COURT: And I believe you  
22 earlier testified you never stopped anyone in an attempt  
23 to ascertain whether that was the missing truck?

24 THE POTENTIAL JUROR: No.

25 THE COURT: Did you

1 participate any further in this case in any -- by looking  
2 for it, any evidence by going to the scene, by  
3 interviewing witnesses, was there any other participation  
4 no matter how slight?

5 THE POTENTIAL JUROR: No.

6 THE COURT: Does either side  
7 have a question concerning his participation in or  
8 potential participation in this case?

9 Mr. Lee?

10 MR. LEE: Do you have any  
11 specific recollection as to what they said or you just  
12 know that the bulletin came out?

13 THE POTENTIAL JUROR: I just  
14 know it came out.

15 MR. LEE: That's all.

16 THE COURT: Mr. Old?

17 MR. OLD: My question to him  
18 and the Court, may I may it, is -- is this case to the  
19 best of his knowledge is this case we are talking about?

20 THE COURT: Are you sure that  
21 the bulletin referred to this case or could have been  
22 another case?

23 THE POTENTIAL JUROR: We get  
24 them really everyday.

25 THE COURT: When Mr. Old asked

1       you about that you seemed to be fairly sure it had to do  
2       with this case?

3                   THE POTENTIAL JUROR: I am  
4       pretty sure it was this case. I remember it was from the  
5       Cason area.

6                   THE COURT: So your bulletin  
7       said or your report said it was a missing truck in a  
8       murder case from the Cason area?

9                   THE POTENTIAL JUROR: Morris  
10      County. It come out of Morris County.

11                  THE COURT: So you put  
12      together the fact that you were looking for a missing  
13      truck out of Morris County at or about the time of this  
14      murder and decided in your own mind since then that it  
15      had to be that alleged offense?

16                  THE POTENTIAL JUROR: I  
17      believe that it said "In the Cason area", I can't really  
18      remember the teletype.

19                  THE COURT: And you can't  
20      remember whether the victim's name was mentioned to you?

21                  THE POTENTIAL JUROR: No. I  
22      don't. I don't know.

23                  THE COURT: Is that teletype  
24      still available?

25                  THE POTENTIAL JUROR: Yes,

1       sir. It should be.

2                       THE COURT: Would you see if  
3       you could locate it and if you do would you deliver a  
4       copy back to either our Court Reporter, Lloyd, or our  
5       Bailiff, Leo?

6                       THE POTENTIAL JUROR: Yes.

7                       THE COURT: And could you do  
8       that by 9:00 o'clock or say 10:00 o'clock Monday morning?

9                       THE POTENTIAL JUROR: Yes,  
10      sir.

11                      THE COURT: Mr. Old?

12                      MR. OLD: I have nothing  
13      further.

14                      MR. LEE: Your Honor, we would  
15      offer our services as far as contacting the police  
16      department and --

17                      THE COURT: Since he works for  
18      the police department I would rather have him do it. I  
19      am -- if he can't locate it then I may request your  
20      assistance but I would rather keep it independent.

21                      Mr. Old, anything else?

22                      MR. OLD: Nothing else before  
23      the juror.

24                      THE COURT: You are free to  
25      go but you are still a potential juror.



1 THE POTENTIAL JUROR: If I am  
2 not able to locate it at our department sometimes they  
3 keep them and sometimes they don't.

4 THE COURT: If you can't  
5 locate it --

6 MR. TOWNSEND: Your Honor, I'm  
7 sorry, I thought you were through talking to him.

8 THE COURT: Well, I thought  
9 so, too, but apparently not; if you can't locate it in  
10 your department is there any other place it would be?

11 THE POTENTIAL JUROR: Whoever  
12 sent the teletype out keeps a copy of it.

13 THE COURT: If you can't  
14 locate it in your office let one of these two gentlemen  
15 know by 10:00 o'clock.

16 I will as the State to maybe locate it.

17 MR. TOWNSEND: The only  
18 problem, the only thing I am concerned with, if he's  
19 looking for the teletype he might --

20 MR. LEE: Potential juror.

21 MR. TOWNSEND: -- he might  
22 find some other information that would relate to the case  
23 for that reason.

24 THE COURT: Good point.

25 MR. TOWNSEND: So we look for

1 the teletype or the Court or the Bailiff or something.

2 THE COURT: Let's go off the  
3 record.

4  
5 (Off the record discussion out of the  
6 presence and hearing of the potential juror:)

7  
8 THE COURT: Ask Mr. Alexander  
9 to step in, have Mr. Alexander step in so I make sure  
10 that I tell him not to look for it and I want this on the  
11 record.

12  
13 (The following occurred in the presence  
14 and hearing of the potential juror:)

15  
16 THE COURT: Officer, I think  
17 the lawyer pointed out and I think it may be  
18 inappropriate for you to look for that teletype, you  
19 might run across more information.

20 So I'm going to have someone else look  
21 for that teletype.

22 Did you ever receive more than or read  
23 or have read to you more than one teletype?

24 THE POTENTIAL JUROR: No.

25 THE COURT: And was it to the

1 best of your knowledge on the alleged date of this  
2 offense which would have been last June -- June of '93?

3 THE POTENTIAL JUROR: To the  
4 best of my knowledge that's when it was.

5 THE COURT: But there was only  
6 one teletype?

7 THE POTENTIAL JUROR: That's  
8 all I remember is one.

9 THE COURT: Thank you, sir.  
10 We will talk to you some next week.

11 We are in recess until 1:00 o'clock  
12 Monday.

13 THE BAILIFF: Do you want to  
14 talk to this other gentleman out here?

15 THE COURT: Yes.

16 We are not in recess.

17 Bring him in here.

18  
19 (The following occurred in the presence  
20 and hearing of the potential juror:)

21  
22 DANIEL RAY SMYTH, Potential Juror #59  
23 was called as a Potential Juror and, having been  
24 previously sworn by the Court, testified as follows:  
25

1 THE COURT: Okay. Let's get  
2 on the record.

3 Sir, are you "Daniel Smyth" or "Smyth"?

4 THE POTENTIAL JUROR: "Smyth."

5 THE COURT: We kept you back  
6 there quite awhile, haven't we?

7 THE POTENTIAL JUROR: Yes,  
8 sir.

9 THE COURT: Mr. Smyth, we are  
10 not going to be able to talk today, it's getting too late  
11 but you answered a couple of questions in here that have  
12 given us some concern and I want to go over a couple of  
13 these questions.

14 You said that you are in favor of the  
15 death penalty?

16 THE POTENTIAL JUROR: Yes,  
17 sir.

18 THE COURT: You said that you  
19 believed the death penalty is appropriate in all murder  
20 cases?

21 THE POTENTIAL JUROR: Yes,  
22 sir.

23 THE COURT: There is another  
24 question that says, "If you are in favor of the death  
25 penalty in some murder case do you agree that a life

1 sentence would be appropriate under the proper  
2 circumstances"?

3 And you have left that blank. Do you  
4 believe a life sentence would be appropriate in a murder  
5 case under some circumstances?

6 THE POTENTIAL JUROR: Yes,  
7 sir.

8 THE COURT: Let's go to the  
9 next page which is the one that really gives me some  
10 concern, I'm going to read the question to you and the  
11 first question, "Do you have any moral, religious or  
12 personal feeling that would prevent you from sitting  
13 judgment on another human"?

14 And you said, "No."

15 The second question is, "Do you have any  
16 moral, religious or personal belief that would prevent  
17 you from returning a verdict which would result in the  
18 execution of another human"?

19 You said, "Yes."

20 Would you explain to me why you answer  
21 "Yes" and where you feel that you could not sit in a case  
22 that might result in a death penalty?

23 THE POTENTIAL JUROR: I -- I  
24 don't know, I just have a little touch of dyslexia and  
25 sometimes I see stuff backwards and forwards.

1 THE COURT: You also said that  
2 you know of a reason that you can't sit as a juror in  
3 this case and be fair to both sides, is that the reason,  
4 the dyslexia?

5 THE POTENTIAL JUROR: Yes,  
6 sir.

7 THE COURT: So you are saying  
8 -- do you know Mr. Wardlow?

9 THE POTENTIAL JUROR: No, sir.

10 THE COURT: Do you know  
11 anything about the facts of this case?

12 THE POTENTIAL JUROR: I know  
13 the man, I know some of his land, I used to fish on it.

14 THE COURT: Did you ever meet  
15 the alleged victim?

16 THE POTENTIAL JUROR: No.

17 THE COURT: So you don't know  
18 him?

19 Have you read about this case and heard  
20 about it?

21 THE POTENTIAL JUROR: I have  
22 heard about it.

23 THE COURT: Do you have an  
24 opinion, have you formed an opinion as to the guilt  
25 or innocence of Mr. Wardlow?

1 THE POTENTIAL JUROR: Yes,  
2 sir.

3 THE COURT: Would that opinion  
4 effect your verdict?

5 THE POTENTIAL JUROR:  
6 Probably.

7 THE COURT: I need a "Yes" or  
8 "No."

9 THE POTENTIAL JUROR: Yes,  
10 sir.

11 THE COURT: Okay. You may  
12 step out for a moment.

13 Do you all agree?

14 Sir, don't leave, I want to talk to the  
15 lawyers for a moment then I will have some more  
16 instructions for you.

17  
18 (Off the record discussion.)

19  
20 THE COURT: Let's get back on  
21 the record.

22 The Court believes first that the juror  
23 believes his physical condition impairs him to the point  
24 that he should not be in this case.

25 Further I believe he's absolutely

1 disqualified by Article 35.16, 10 of the Code of Criminal  
2 Procedure, he stated that he does have a conclusion as  
3 to the guilt or innocence of the Defendant and that it  
4 would effect his opinion.

5 I read that Rule as prohibiting me or  
6 any other party from further questioning the juror.

7 I'm going to find the juror is  
8 disqualified.

9 Mr. Old, do you have anything you want  
10 to put on the record?

11 MR. OLD: Your Honor, we would  
12 except from the ruling of the Court if necessary.

13 THE COURT: All right.

14 MR. OLD: As to both findings.

15 THE COURT: Both findings?

16 MR. OLD: As to the dyslexia,  
17 he indicated he had a little problem with it, my best  
18 friend in law school had a big problem with his, he  
19 passed the State Bar and is doing a lot better than I  
20 am.

21 THE COURT: Maybe it would  
22 help us all to have dyslexia.

23 MR. OLD: He read so he  
24 could read and he could write and the other, we still  
25 except to it, do not feel like the answer disqualifies



1 him.

2 THE COURT: I'm going to find  
3 him disqualified under 35.16 for the reason that I  
4 believe his dyslexia would impair his ability to be a  
5 fair and impartial juror over the objection of the  
6 Defense.

7 Tell Mr. Smyth that we are going to  
8 excuse him, he's free to go.

9 And we are in recess until 1:00 p.m.  
10 Monday.

11  
12 (Record closed for October 27th, 1994.)

13  
14 (Whereupon Court was recessed until 1:00  
15 p.m., October 31st, 1994.)

16  
17  
18 \*\*\*\*\*  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
84

4  
5  
6  
7  
8  
9  
10

11  
12  
13  
14

15  
14

1  
1  
1

1 Certification Number of Reporter: 149

2 Expiration Date of Certification: 12/31/96

3 Business Address: Drawer 1868  
4 Mt. Pleasant, Texas 75456-1868

5 Telephone Number: 903/577-6735

6 Transcribed By: Tandra K. Gibson  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25